

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 MARTIN SHKRELI,

7 Defendant.

15-CR-00637 (KAM)

United States Courthouse
Brooklyn, New York

July 10, 2017
9:00 a.m.

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9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
10 BEFORE THE HONORABLE KIYO A. MATSUMOTO
11 UNITED STATES DISTRICT JUDGE
BEFORE A JURY

12 APPEARANCES

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24 Proceedings recorded by mechanical stenography. Transcript
25 produced by computer-aided transcription.

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1 COURTROOM DEPUTY: All Rise.

2 (Jury enters the courtroom.)

3 THE COURT: Good morning, ladies and gentlemen of
4 the jury. Hope you had a good weekend. Please be seated
5 everybody.

6 If you'd like to continue your direct you may do so,
7 sir.

8 MR. SRINIVASAN: Yes, your Honor.

9 THE COURT: Good morning. You're still under oath,
10 sir, so the Government will continue with their questioning.
11 A Okay.

12 THE COURT: Have a seat.

13 (Witness takes the witness stand.)

14 RICHARD KOCHER, called as a witness, having been previously
15 first duly sworn/affirmed, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. SRINIVASAN:

19 Q Good morning, Mr. Kocher.

20 A Good morning.

21 Q We concluded last week on Government's Exhibit 83-4, if
22 we could pull that exhibit up, please. It's in the small
23 binder tab four if you'd like a paper copy.

24 Mr. Kocher, when was this statement sent to you?

25 A September 9, 2012.

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1 Q Now at this point in September 2012 did you have an
2 understanding of how much MSMB Healthcare had invested in
3 Retrophin?

4 A No.

5 Q Did you have an understanding of how much of MSMB
6 Healthcare's portfolio was in the liquid securities?

7 A No.

8 Q To what extent were you informed that all of MSMB
9 Healthcare's money had been invested in Retrophin?

10 A I remember that Kevin Mulleady told me that they had put
11 something like \$10 million into it, but I never saw any
12 statements or -- that was what he had said. And I didn't know
13 if it was a loan or, I didn't know what it was.

14 Q During the course of your MSMB Healthcare investment, did
15 you approve any personal loans by MSMB Healthcare to the
16 defendant?

17 A No.

18 Q If you had learned of any personal loans to the
19 defendant, what, if any, effect would that have had on your
20 continued investment?

21 MR. AGNIFILO: I object to the relevance to this.
22 There is no obligation.

23 THE COURT: Do you want to have a sidebar?

24 MR. SRINIVASAN: Sure, your Honor.

25 (Continued on the next page.)

SIDEBAR CONFERENCE

1 (Sidebar conference.)

2 THE COURT: May I ask a question, I'm assuming that
3 you're asking the question because personal loans were made?

4 MR. SRINIVASAN: In Mr. Shkreli's SEC testimony
5 there were questions about \$775,000 that was classified as a
6 loan. Mr. Shkreli described it as a personal loan that he
7 intended to pay and reimburse to the MSMB Healthcare
8 investors.

9 THE COURT: \$775,000 from MSMB?

10 MR. SRINIVASAN: Exactly, Healthcare. I think that
11 the evidence will show that that money was not disbursed back
12 to the MSMB Healthcare investors. So we think it's relevant
13 to these charges. I don't have very many questions about
14 this, just establishing his knowledge and awareness of this
15 issue.

16 MR. AGNIFILO: The basis of the objection, Judge, is
17 there nothing in the PPM, which they have not even discussed
18 with this witness, that precludes this thing. The question
19 presupposes a duty to not do that; but there is no duty do
20 that.

21 THE COURT: That is something you can ask him on
22 cross.

23 MR. BRAFMAN: Judge, there is no obligation to
24 inform any investor in MSMB as to how the funds are being
25 disbursed; and this presupposes that there is such an

SIDEBAR CONFERENCE

1 obligation. So asking him, did you know that Mr. Shkreli was
2 borrowing money or lending money, suggests that that is
3 something Mr. Shkreli had to disclose.

4 THE COURT: Does the PPM define what the fund is
5 going to do with the invested funds?

6 MR. BRAFMAN: In several places in the PPM it has
7 discretion entirely on the general partner with no obligation,
8 so long as he's acting in good faith. This is like asking the
9 witness who has no knowledge about the terrible thing that
10 somebody did so you get the question out. Because he has
11 nothing to do with Mr. Shkreli, his personal contact is
12 Mulleady. There is nothing in the 3500 material that suggests
13 that somebody said to him the money is never going to be used
14 for a loan.

15 MR. SRINIVASAN: Your Honor, I think the lack of
16 awareness is a relevant issue. When the fund is shut down,
17 the representation that is made to the investors is the money
18 will be disbursed to them. Mr. Shkreli indicates there is
19 additional \$775,000 out there that is disbursed to investors,
20 they don't get it.

21 THE COURT: Does he describe the \$750,000 as it's
22 winding down?

23 MR. SRINIVASAN: Nothing, he never tells them.

24 MR. BRAFMAN: That's the point. They want to argue
25 on summation, they have evidence of the loan and the records,

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1 they will argue on summation a misuse of MSMB funds, that
2 might be a fair argument. But to float a question to a
3 witness who they know doesn't have a clue about this issue and
4 never has, just to ask the question is suggest to the jury
5 that Mr. Shkreli has an obligation to each limited partner
6 every time he spends \$10 from this fund, and that is not true.

7 MS. SMITH: I will say that Mr. Shkreli testified
8 that he got permission from the limited partner. That's a
9 statement he made to the SEC. As well there is an affirmative
10 misrep later on related to what information he provided to the
11 limited partners about the loan that is relevant.

12 MR. AGNIFILO: But without pulling in the PPM, which
13 they had not yet done, to establish what the duties are, they
14 are going at this backwards. They have to establish a duty
15 before they ask the question, before putting in the PPM and
16 saying what the duties are, what they said the duties and
17 responsibilities are based on the PPM. I don't think they can
18 avoid that step and suggest that there is a duty on
19 Mr. Shkreli to do this when there is no duty established.

20 MR. SRINIVASAN: We can do it subject to connection.
21 There is going be another witness later on where the PPM will
22 go in. I think all we established here, is just a lack of
23 awareness.

24 THE COURT: He had a PPM that you can put in for
25 him?

SIDEBAR CONFERENCE

1 MR. SRINIVASAN: He didn't recall it.

2 MR. AGNIFILO: That's our problem. That's the whole
3 problem with the whole line of questioning.

4 MR. SRINIVASAN: It does get the representation that
5 the funds in MSMB were fairly disbursed to a limited partners.
6 I think that representation about distribution is relevant.

7 THE COURT: Is there ever any mention of the
8 \$775,000 by Mr. Shkreli to any of the limited partners?

9 MR. SRINIVASAN: No.

10 THE COURT: But did he make a statement to the SEC
11 that he informed them of it?

12 MS. SMITH: Yes.

13 THE COURT: I think it's fair for them to do this
14 subject to connection, then that evidence is coming in his
15 testimony to the SEC regarding disclosure of the 775.

16 MS. SMITH: Those are some of the statements that we
17 previewed and did the whole Rule of Completeness motion in
18 limine nature on.

19 MR. AGNIFILO: What are you going to say the
20 statement is exactly?

21 MS. SMITH: The statements is already marked as an
22 exhibit.

23 MR. AGNIFILO: What is the statement that makes this
24 testimony relevant?

25 MS. SMITH: I can double check. I believe he said

SIDEBAR CONFERENCE

1 he informed the limited partners of the personal loan.

2 MR. BRAFMAN: I don't think he said any of the
3 statements. I don't remember seeing any of the statements.

4 MS. SMITH: We can take a quick break and check
5 that.

6 THE COURT: Save that question, check it in the
7 meantime, if you can verify that he said that to the SEC then
8 I think this statement that you're offering can come in.

9 MS. SMITH: He did say it. I believe it's in the
10 statements we've marked. I'll double check.

11 THE COURT: But you're positive he did make the
12 statement to the SEC.

13 MS. SMITH: Yes.

14 MR. BRAFMAN: Whether he said it to the SEC is not
15 the issue. The issue is whether the statements were admitted
16 against Mr. Shkreli in this trial include that statement.

17 MS. SMITH: That's the piece I'm going to check.

18 THE COURT: Keep going around this one and we'll
19 come back to it.

20 (End of sidebar conference.)

21 (Continued on the next page.)

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1 (In open court.)

2 MR. SRINIVASAN: Your Honor, may I proceed?

3 THE COURT: Yes.

4 DIRECT EXAMINATION

5 BY MR. SRINIVASAN:

6 Q Mr. Kocher, did there come a time you learned that MSMB
7 Healthcare would be shutting down?

8 A Yes. I got a memo approximately, I think it was the same
9 date, September 9.

10 Q In the bigger binder that you have in front of you, if
11 you can turn to tab 12, that's Government's Exhibit 107-12
12 marked for identification. Do you recognize this document?

13 A Yes.

14 Q What is it?

15 A It's an e-mail from Martin to me.

16 Q What is the date on the document?

17 A It's September 9, 2012.

18 MR. SRINIVASAN: Your Honor, we move 107-12 into
19 evidence.

20 MR. AGNIFILO: Bear with me, no objection.

21 THE COURT: We'll receive 107-12.

22 (Government Exhibit 107-12, was received in
23 evidence.)

24 BY MR. SRINIVASAN:

25 Q Mr. Kocher, turning your attention to the first

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1 paragraph.

2 A Yes.

3 Q It says, the first sentence says, "I have decided to wind
4 down our hedge fund partnerships with a goal of completing the
5 liquidation of the funds by November or December 1st, 2012."

6 What did you understand this to mean?

7 A Well, I wasn't really sure, but I found it curious that
8 they were going to wind it down. But at any rate, they are
9 saying that they would take, they would basically, I assume
10 that I was going to get paid back my account balance by the
11 end of the year.

12 Q Let's go to the second page, Bates RK000291. Turning
13 your attention the last paragraph, the first two sentences
14 say, "A few operational notes. Investors will have their
15 limited partnership interests redeemed by the fund for cash.
16 Alternatively investors may ask for a redemption of Retrophin
17 shares or a combination of Retrophin shares and cash."

18 What did you understand that language to mean?

19 A Well, we could get our money back in cash, if we wanted
20 to, or alternately in Retrophin stock, or a combination of
21 either.

22 Q Did you believe that was your choice as to cash or stock?

23 A Well, my choice would be cash.

24 Q After you received this e-mail, did you try to redeem
25 your investment?

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1 A I didn't try to redeem it right away.

2 Q Why not?

3 A Because they were saying they were going to take care of
4 it by the end of the year. So I thought you know, that that
5 was going to happen.

6 Q Did it happen by the end of the year?

7 A No, it didn't.

8 THE COURT: You say "they," who do you think they
9 is?

10 THE WITNESS: MSMB or Martin.

11 BY MR. SRINIVASAN:

12 Q Now, at some point did you try to redeem your investment?

13 A Yes.

14 Q Did you contact anybody about that?

15 A I believe I probably contacted Kevin first. And then at
16 a certain point Kevin was out of the company, and you know, I
17 had to pursue it directly with Martin.

18 Q Showing you what is marked for identification as
19 Government's Exhibit 107-15, which is tab 15 in that binder,
20 do you recognize this document?

21 A Yes.

22 Q What is it?

23 A This is an e-mail from me to Martin.

24 Q What is the date on the top there?

25 A March 11, 2013.

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1 MR. SRINIVASAN: Your Honor, we move Government
2 Exhibit 107-15 into evidence.

3 MR. AGNIFILO: No objection.

4 THE COURT: We will receive 107-15.

5 (Government Exhibit 107-15, was received in
6 evidence.)

7 Q Let's start on the bottom e-mail on this page, when did
8 you write this e-mail?

9 A This was March 11, 2013.

10 Q You're writing it to Martin Shkreli, Evan Greebel,
11 Jim@attorneyburke.com, Kevin@stonecornergroup.com, and
12 FuldaKocher@gmail.com. What was your understanding who Evan
13 Greebel was?

14 A My understanding was that Evan Greebel was Martin
15 Shkreli's lawyer.

16 Q How about Jim@attorneyBurke.com?

17 A He's my actual zoning lawyer for Hoboken, New Jersey
18 City.

19 Q Is there any reason you're CC'ing him on this e-mail?

20 A Well, I had been trying to get Martin's attention to try
21 to get my money back. I wasn't getting anywhere, so I
22 included my lawyer in it.

23 Q And FuldaKocher@gmail.com?

24 A That's my wife.

25 Q Looking at the body of the e-mail, could you please read

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1 that?

2 A Sure. "Hello Martin. I have repeatedly attempted to
3 contact you via phone over the past two days. I know that you
4 are busy but I have given over two months' notice that I was
5 going to need to liquidate my account by the 15th of this
6 month, which is the end of this week. I have been in contact
7 with Kevin Mulleady, who has been my account manager, but now
8 he tells me I have to go contact you directly. As I hope you
9 are aware, I am an LP in the MSMB Healthcare fund. I actually
10 was the client that wired in money on a day's notice when your
11 organization was in a tight spot. Per my conversation with
12 Kevin Mulleady, my account value was approximately \$280,000,
13 which was towards the end of last year. Retrophin has gone up
14 in value substantially since then, and I'm aware that our
15 hedge fund which funded Retrophin directly should benefit
16 directly because of this. I am also aware that you manage
17 both companies, which seems to be a conflict of interest. If
18 our hedge fund doesn't benefit directly from Retrophin which
19 it helped fund it. My position in MSMB was supposed to be
20 transitioned into shares of Retrophin, but I can never get a
21 straight answer as to how or when this is supposed to happen.
22 I have liquidity needs and would like to be aware of my
23 account value immediately. Based on this information I
24 potentially will exercise my rights to weekly redemption, a
25 side letter signed by you. As this is a formal request I have

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1 CC'ed your attorney, Evan Greebel, and my attorney, Jim Burke.
2 I expect an expedited response. Thank you. Richard Kocher."

3 Q What did you mean when you wrote, "I'm also aware that
4 you manage both companies, which seems to be to be a conflict
5 of interest if our hedge fund doesn't benefit directly from
6 Retrophin which has helped fund it"?

7 A Well, it seemed obvious that if all of a sudden he's
8 winding down the hedge fund and now it's basically become
9 Retrophin that and he's -- I would think in terms of fiduciary
10 responsibility that there is a conflict of interest there
11 because he is managing both companies.

12 Q Going up one e-mail, the defendant wrote back on
13 March 11, 2013 to you CC'ing Evan Greebel. He writes, "Hi
14 Richard. We are just acknowledging receipt. We'll get back
15 to you within 24 hours. I need your mailing address if you
16 have that handy."

17 Then going up one more e-mail, what did you write
18 back?

19 A I wrote back, I gave him my address.

20 Q Did your communications with the defendant continue after
21 this point?

22 A Yes.

23 Q I'm showing you what is marked for identification as
24 Government's Exhibit 107-16, tab 16 in your binder. Do you
25 recognize this?

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1 A Yes, this is another e-mail from me to Martin.

2 Q Looking at the top, what is the date?

3 A The date is March 12, 2013.

4 MR. SRINIVASAN: Your Honor, we move Government's
5 Exhibit 107-16 into evidence.

6 MR. AGNIFILO: No objection.

7 THE COURT: We will receive 107-16

8 (Government Exhibit 107-16, was received in
9 evidence.)

10 Q Mr. Kocher, I'd like to call your attention to the e-mail
11 that is in the middle, March 12, 2013, at 4:19 p.m. Do you
12 see that?

13 A Yes.

14 Q What did you write?

15 A "Hi Martin. Well, it's been over the 24 hours since you
16 said you would get back to me, and I called you again without
17 a response. I've already sent you my address, but asking for
18 wiring instructions would be more appropriate."

19 Q Going up one e-mail, the defendant wrote back on
20 March 12, 2013, "We are distributing the funds holdings to
21 you. You should receive a stock certificate this week."

22 Were you informed about a potential stock
23 certificate before this point?

24 A No.

25 Q Going up one e-mail, what did you write on March 12,

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1 2013?

2 A "My last account value was 280,000 and it was in a
3 diversified MSMB Healthcare portfolio, MSMB, which was net
4 neutral. If my redemption is in Retrophin shares, which is
5 thinly traded, then I would assume my account value would be
6 higher to compensate for the illiquidity. So how many shares
7 are you giving me?"

8 Q What did you mean by, quote, "diversified health care
9 portfolio"?

10 A Well, it was supposed to be diversified health care
11 portfolio. Originally when they sent out, I think the
12 original literature that I had gotten from them, I think it
13 said they weren't going to hold more than 10 percent share in
14 any particular company. I think nothing greater than that, I
15 think that's what it said. In other words, it was going to be
16 diversified. It was going to have various companies and that
17 they would hold or hold stock in companies.

18 Q When you say "it," are you referring to the fund?

19 A Yes.

20 Q What did you mean when you wrote, "I would assume my
21 account value would be higher to compensate for illiquidity"?

22 A Well, if they were going to give me shares of Retrophin,
23 I knew that the Retrophin stock was very-thinly traded; in
24 other words, there is very low volume. So maybe you get 1,000
25 shares or 2,000 shares that were traded each day, so if you

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1 tried to sell, you know, 5,000 shares the stock would go from,
2 if it was at \$4.00 it would go down to three or two, if you
3 tried to get rid of stock right away. So you couldn't sell
4 the stock.

5 Q What was your reaction to that?

6 A Well, I made it clear that I needed cash, that I needed
7 liquidity. I needed money right away. So I was upset about
8 it.

9 Q After this point did the defendant send you a stock
10 certificate for Retrophin?

11 A They did.

12 Q I'm showing you what's been marked for identification as
13 Government's Exhibit 107-18, do you recognize this?

14 A This is another e-mail from Martin to me.

15 Q What is the date on the top?

16 A This is March 14, 2013.

17 MR. SRINIVASAN: Your Honor, we move Government's
18 Exhibit 107-18 into evidence.

19 MR. AGNIFILO: No objection.

20 THE COURT: We'll admit 107-18.

21 (Government Exhibit 107-18, was received in
22 evidence.)

23 Q I'd like to focus on the top e-mail, where it starts
24 here. The defendant writes, "Here is the FedEx confirmation
25 number. They the attempted delivery and he will redeliver

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1 again tomorrow. It is a certificate for 23,654 shares. It is
2 not the full redemption. Let us discuss when is a good time
3 for you."

4 Based on this e-mail, did you believe that these
5 shares were a full or partial redemption of your investment?

6 A A partial redemption.

7 Q Did you, in fact, receive the 23,654 shares?

8 A Yes.

9 Q Were they restricted or unrestricted?

10 A They were restricted, essentially they were worthless to
11 me.

12 Q Why were they worthless to you?

13 A Restricted stock you can't sell at all.

14 Q Did you make a further attempts to obtain your full
15 redemption request?

16 A Yes.

17 Q I'm showing you what is marked for identification as
18 Government's Exhibit 107-22, this is tab 22 in your binder.
19 Do you recognize this?

20 A Yes.

21 Q What is it?

22 A An e-mail from me on March 18, 2013 to Martin.

23 MR. SRINIVASAN: Your Honor, we move 107-22 into
24 evidence.

25 MR. AGNIFILO: No objection.

KOCHER - DIRECT - MR. SRINIVASAN

1 THE COURT: We received 107-22.

2 (Government Exhibit 107-22, was received in
3 evidence.)

4 Q I'd like to start by the e-mail on the bottom there,
5 which is dated March 15, 2013. What did you write?

6 A "Martin, just so you understand my situation. I have
7 counted on what your memo back in September said, that we
8 would be taken care of before the end of the year. And that
9 we would be able to taken out in cash or in stock of our
10 choice. For some reason you are giving me Retrophin stock
11 that is not tradeable and it is worth around a quarter of what
12 I'm owed. And now you are going to somehow compensate later
13 for it. I'd like to remind you, again, that when you were in
14 trouble and needed \$100,000, I wired it over the next day. I
15 have given you over two months' notice. I expect to get in
16 addition to this insulting, untradeable stock, at least
17 \$200,000, which you owe me in cash, wired to my account by
18 early next week. I have already been in touch with counsel
19 that is versed in this kind of litigation. You should be
20 hearing from them soon. I have damages that have occurred
21 because I have been relying on what you have represented as
22 the manager of MSMB. I also believe that as manager of MSMB
23 and CEO of Retrophin, that you have not lived up to your
24 fiduciary responsibilities to me as an LP. And that I will
25 require a full accounting of both MSMB and Retrophin and your

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1 financial involvement. Also I will make sure that this does
2 go public and will also go to the appropriate agencies. I'm
3 going to attach your e-mail from September, again, for the
4 limited partners."

5 Q Mr. Kocher, you write, "I had damages that have occurred
6 because I've been relying on what you have represented as the
7 manager of MSMB," what did you mean by that?

8 A Well, towards the end of 2012 when I was expecting to get
9 the money back, I went into contract on two properties one in
10 Jersey City and one in Hoboken. And so I had to close on
11 those properties around this time, it was actually March/April
12 time frame for one property, and then a little bit later for
13 the next property. In order to close on them I needed this
14 cash.

15 Q In the middle of the page, this is the e-mail, next
16 e-mail up, he wrote the defendant wrote on March 15, 2013, "I
17 called your office. You can call me with or without counsel
18 at your convenience (212)983-1310, CC'ing my attorneys if you
19 want to start a dialogue with them."

20 And then going up one more e-mail, you wrote back on
21 March 18, "I called you back Friday, and left my cellphone but
22 go no response. I also called your office this morning and
23 couldn't get you. Let me know what you are thinking in terms
24 of taking care of me. You can e-mail me. Up to now the
25 communication has been very poor."

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1 What was your reaction to the defendant's responses
2 so far?

3 A Well, him sending me restrictive stock was, like I said,
4 an insult, as far as I was concerned. Because I felt like I
5 went out of my way to give him money when they needed and when
6 MSMB needed it. And it was obvious that I had given him a lot
7 of notice here and I was given the run-around. For me to get
8 restrictive stock, and I never got an account balance for
9 anything after July, so there was August, September, October.
10 So I really didn't know what my account balance was exactly.

11 THE COURT: Of what year, 2012 or 2013.

12 THE WITNESS: 2012.

13 Q A minute ago you mentioned sending MSMB Healthcare money
14 when they needed it. Who is they?

15 A Well, it was, you know, Kevin at that time, it was Kevin
16 Mulleady and Martin.

17 Q When you say "at a time when they needed it," what is
18 that a reference to?

19 A Well, they called me on short notice and said they needed
20 money that week.

21 MR. AGNIFILO: Who called? Did they both call? He
22 said they.

23 THE WITNESS: I believe it was Kevin that called me.

24 THE COURT: What did he say he needed the money for,
25 MSMB Healthcare? Or was it in relation to the fund or

KOCHER - DIRECT - MR. SRINIVASAN

1 something else?

2 THE WITNESS: I don't remember exactly, but I
3 assumed it was for MSMB Healthcare.

4 BY MR. SRINIVASAN:

5 Q What time frame was that request made?

6 A Well it was made -- I'm sorry, you want to know the date?

7 Q The rough time frame.

8 A Initially, I think it was May.

9 Q Of?

10 A Of 2012.

11 Q Mr. Kocher, I'm showing you what is marked for
12 identification as Government's Exhibit 107-23, do you
13 recognize this?

14 A Yes.

15 Q What is this?

16 A This is another e-mail from Martin to me sent Friday
17 March 22, 2013.

18 MR. SRINIVASAN: Your Honor, we move Government's
19 Exhibit 107-23 into evidence.

20 MR. AGNIFILO: No objection.

21 THE COURT: We will receive 107-23.

22 (Government Exhibit 107-23, was received in
23 evidence.)

24 Q Let's start with the bottom e-mail, Mr. Kocher.

25 A Okay.

KOCHER - DIRECT - MR. SRINIVASAN

1 Q This is the defendant writing to you March 21, 2013, the
2 subject like line is solution.

3 And he writes, "Hi Rich. We've decided to double
4 the shares you've received mathematically and legally we have
5 divested the full contents of the fund to you. All
6 investments have some element of risk and this one was no
7 exception. Having said that and taking your comments into
8 account, we think doubling the shares you received will be a
9 good start to a solution. We are also willing to buy back
10 your shares or help to arrange a buy back. You mentioned
11 liquidity is important to you and we wanted to help. We can
12 speak any time Monday to get the process started. Thank you
13 for your continued patience and trust, Martin."

14 Mr. Kocher, did you have any understanding of the
15 basis or the reason for doubling the shares that are reflected
16 here?

17 A No.

18 Q Did you have any understanding of what a "good start to a
19 solution," was a reference to?

20 A He's negotiating at this point, that's the way I saw it.
21 He's still trying to low-ball me. And you know, as far as
22 what my actual account balance or if there was an account
23 balance, didn't seem to make any difference, that was my
24 interpretation of it.

25 Q Going up one e-mail, this is dated March 22, 2013, what

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1 did you write back?

2 A "Hi Martin. I will call you on Monday. Doubling the
3 shares doesn't cut it. It will not bring me back to the 280K
4 that was my last account balance. And it's not liquid, but as
5 you said, it will be a start to a solution."

6 Q Going up one e-mail, this is the defendant writing to you
7 on March 22, 2013. He writes, "I'll make sure you get back to
8 the last account value and it's liquefied immediately."

9 What was your reaction to this?

10 A Well, I was optimistic that he might do that.

11 Q Did your efforts to redeem your investment continue after
12 March 22?

13 A Yes.

14 Q I'm showing you Government's Exhibit 107-25, marked for
15 identification, tab 25 in your binder. Do you recognize this
16 document?

17 A Yes, this is a e-mail from me to Martin on March 27,
18 2013.

19 MR. SRINIVASAN: Your Honor, we move Government's
20 Exhibit 107-25 into evidence.

21 MR. AGNIFILO: No objection.

22 THE COURT: We will receive Government's Exhibit
23 107-25.

24 (Government Exhibit 107-25, was received in
25 evidence.)

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1 Q Let's go to the second page of this exhibit, Bates
2 R017964. There appears be to a long e-mail in the middle of
3 the page, do you see that?

4 A Yes.

5 Q This is from you dated March 26, 2013, to Martin Shkreli
6 and David G. Trachtenberg. Who was David G. Trachtenberg?

7 A David Trachtenberg is of the firm Trachtenberg Rodes.
8 And he was a lawyer, a New York lawyer, that I hired.

9 Q For?

10 A He was my lawyer.

11 Q What did you write to the defendant?

12 A "Hi Martin. Nice to speak with you yesterday. I
13 appreciate you apologized for not being professional about how
14 I have been treated. You indicated you would be available
15 today so we could finish up and I could finally get redeemed
16 from my investment with you. As per our conversation you have
17 agreed to buy my restricted Retrophin shares at market price
18 or approximately 23,564 times \$5.10, as of now, which is
19 120,176. And in addition to the 120,176, you will send me
20 50,000 shares of unrestricted Retrophin stock. You also
21 indicated that you would try and get me some more stock, but
22 were not specific about the quantity or the time. Because I
23 have not been able to get my redemption from you, I've had to
24 get out of other liquidity investments and I now risk not
25 being able to live up to my contractual obligations because

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1 I've been unable to get my account redeemed. You indicated
2 you would start the process today, but I've called of twice
3 again, and again it's at the end of the day, so I'd like to
4 remind you that there was a point when it looked like we would
5 be paid back 3.5 account balance before our fund helped
6 finance Retrophin and bought Retrophin -- brought Retrophin
7 public. Again, we were supposed to have been redeemed before
8 the end of last year and any cash in Retrophin stock. I'm
9 getting past the point of being patient. Time is of the
10 essence for me now and really expect to be fully taken care of
11 before the end of this week. Don't forget Friday is Good
12 Friday and lot of people are out. I would prefer to keep this
13 amicable. From a practical stand point we need to get this
14 worked out quickly so it does not escalate. It would be
15 helpful if you had someone from your office that could work
16 out the details other than yourself if you're too busy.
17 Rich."

18 (Continued following page.)
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1 Q And in that first paragraph you say as per our
2 conversation.

3 Did you have a conversation with the defendant?

4 A Yes.

5 Q Was this in person or by phone?

6 A It was by phone.

7 Q You also refer to having to get out of other lucrative
8 investments. And you say I'm now risking not being able to
9 live up to my contractual obligations.

10 What is that a reference to?

11 A Well, this is March 26, 2013 already and so we were
12 supposed to close on one of the properties that I had gotten
13 into contract with, the Jersey City, property. And I wasn't
14 going to end up having enough cash to complete the deal. So
15 as it turned out, I ended up having to get a partner involved.

16 Q Could you elaborate on that.

17 A Well, I wasn't going to let the property -- first off, I
18 was contractually obligated to buy the property and, you know,
19 I would be in trouble not to, but also I wanted to buy it. So
20 but I didn't have the cash to do it so I brought in -- I
21 ended up bringing in a partner who came up with, you know,
22 some of the money that was needed to close.

23 Q Did that action have any financial consequences for you?

24 A Well, besides giving -- ending up giving him a lucrative
25 limited partnership deal, I ended up having to pay him a

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1 hundred thousand dollars just to get him out of the, you know,
2 a general partnership. Because I was under financial stress
3 at that point because I didn't have this money back so I had a
4 very tight timeframe. So I had to get someone that was
5 willing to come in, and in order to do that I gave up quite a
6 bit.

7 Q After this point did your communications with the
8 defendant continue about the redemption?

9 A Yes.

10 Q I'm showing you what's marked for identification as
11 Government's Exhibit 107-26. It's tab 26 in your binder.

12 Do you recognize this?

13 A Yes, this is an email from me to Martin, March 28, 2013.

14 MR. SRINIVASAN: Your Honor, we move Government's
15 Exhibit 107-26 into evidence.

16 MR. AGNIFILO: No objection, Judge.

17 THE COURT: We will receive 107-26.

18 (Government Exhibit 107-26, was received in
19 evidence.)

20 Q Mr. Kocher, turning your attention to the email near the
21 bottom which is dated March 27, 2013 at 8:22 p.m.

22 Do you see that?

23 A Yes.

24 Q And this is you writing to the defendant. What did you
25 write?

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1 A "Hi, Martin. Please finalize this deal tomorrow. I
2 don't want to get my attorney involved, but I won't have a
3 choice if you don't get back to me. All we have to do is
4 agree on terms and how we're going to finalize them. It
5 really shouldn't be this hard. Rich."

6 Q Going up one email, this is the defendant writing on
7 March 27, 2013 at 8:33 p.m. He writes, "I'm doing my best.
8 You can't believe how backed up we are right now."

9 What was your reaction to this?

10 A Sorry. Where is this?

11 Q I'm sorry. It's one email up from the one that you just
12 read out.

13 A Okay.

14 Q It's also on your screen.

15 A I see it. Okay.

16 Well, my response is that he had, you know, we are
17 at the end of March now so, you know. I've been trying to get
18 this thing done since the beginning of the year so that's
19 three months into it.

20 Q Going up one email. This is you writing to the
21 defendant, March 27, 2013 at 8:41 p.m.

22 What did you write?

23 A Well, I'm willing to be patient, but the bank wants to
24 see liquid assets in order for me to close a large real estate
25 deal, and I really can't afford to lose this deal so what's

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1 the best way we can proceed?

2 Q And the reference to a large real estate deal, is that
3 the same deal that you were talking about a minute ago?

4 A Yes. And it's actually not a large real estate deal.
5 It's large for me, but actually it's not a big deal.

6 Q I'm showing you what's marked for identification as
7 Government's Exhibit 107-28. It's tab 28 in your binder.

8 Do you recognize this?

9 A Yes.

10 Q What is it?

11 A An email sent from me to Martin, April 2, 2013.

12 MR. SRINIVASAN: Your Honor, we move Government's
13 Exhibit 107-28 into evidence.

14 MR. AGNIFILO: No objection.

15 THE COURT: We receive 107-28.

16 (Government Exhibit 107-28, was received in
17 evidence.)

18 Q Mr. Kocher, starting at the bottom email there, the
19 defendant writes to you on March 31, 2013, I will have an
20 agreement for you to sign tomorrow.

21 And then what did you write on April 1, 2013?

22 A I said to save time can you tell me what the terms are.
23 Tell me the terms.

24 Q And then he writes back April 1, 2013, same terms we
25 discussed and agreed upon.

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1 What did you write back on April 2nd?

2 A Hi, Martin. You said you would have an agreement for me
3 yesterday. Any progress?

4 Q And what was going on in your mind now five days later?

5 A Same thing that's been going on for the last three
6 months. He's just, you know, there's really nothing solid I
7 could really get out of him.

8 Q I'm showing you Government's Exhibit 107-29 marked for
9 identification. Do you recognize this?

10 A Yes.

11 Q What is it?

12 A It's a letter -- email from Martin to me regarding the
13 agreement, April 3rd, which is Wednesday, 2013.

14 MR. SRINIVASAN: Your Honor, we move Government's
15 Exhibit 107-29 into evidence.

16 MR. AGNIFILO: No objection.

17 THE COURT: We will receive 107-29.

18 (Government Exhibit 107-29, was received in
19 evidence.)

20 Q Mr. Kocher, let's start with the bottom there. This is
21 the defendant writing to you on March 31st, I will have an
22 agreement for you to sign tomorrow.

23 Do you see that?

24 A Yes.

25 Q And then if we actually go up two emails.

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1 A Yep.

2 Q It's him writing the same terms we discussed and agreed
3 upon.

4 Is this a continuation of the chain we just saw in
5 the previous exhibit?

6 A Yes.

7 Q Now, if we go up one more email. This is you writing to
8 the defendant on April 3, 2013. Could you please read that.

9 A Martin, now we're going on another two weeks and again
10 you are putting me in a bad situation. If I don't see an
11 agreement from you by tomorrow, then the deal we have agreed
12 on -- agreed to will be off and I will be forced to have you
13 deal with my lawyer. That will change the equation. It will
14 cost me in finding alternate funding for my project, and I
15 will look at what you owe me differently.

16 I will remind you again, when you had someone drop
17 out and needed a hundred K on short notice I got the money to
18 you by the next day. I will go on what I was told by your
19 representative Kevin that my account value of 280,000 will be
20 redeemed for three to three-and-a-half times its value in
21 either cash or Retrophin stock.

22 Q Mr. Kocher, did you have any conversations with the
23 defendant about the value of your investment in these months?

24 A I never got a straight answer. And, obviously, like I
25 said, the last account balance I had was from the year

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1 previous and it was I think in August of 2012.

2 Q And who sent that account balance to you?

3 A Martin did.

4 Q Now, going up an email, the defendant wrote to you on
5 April 3, 2013 at 2:49 p.m., busy running the company. I will
6 send today. I don't know about what Kevin told you, but it's
7 not accurate.

8 What was your reaction to receiving this?

9 A Well, again, the way I saw it, he was just negotiating
10 anyway. I don't know what the account balance was or where it
11 was. I don't know if he did, but I don't think it mattered to
12 him. I think it was more what he could get away with in terms
13 of paying me back.

14 MR. AGNIFILO: Objection. Objection to that
15 statement. Move to strike.

16 THE COURT: Well, he's asking him what his reaction
17 was.

18 MR. AGNIFILO: I'm not sure that's relevant either.

19 MR. SRINIVASAN: It's the witness' understanding of
20 the reaction.

21 MR. AGNIFILO: Well, a reaction -- can we go to the
22 side?

23 THE COURT: All right.

24 (Sidebar conference.)

25 (Continued on the following page.)

SIDEBAR CONFERENCE

Official Court Reporter

ANGELA GRANT, RPR, CRR

SIDEBAR CONFERENCE

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MR. AGNIFILO: Can I have the question and the answer read back?

THE COURT: I've got it on my computer.

MR. AGNIFILO: So what I think it was --

THE COURT: He said what was your reaction.

MR. AGNIFILO: And then he said a bunch of things about what he thinks Martin's reaction about it; I was disappointed, I was happy. It's not what Martin did and that Martin commented on and all these other things he went on to say. It's utterly inappropriate.

MS. KASULIS: He's allowed to interpret what he believed Martin was telling him, what his reaction was as to why Martin made that statement.

MR. AGNIFILO: I don't think that's an appropriate -- that's absolutely inappropriate for him to interpret --

MS. KASULIS: It's his understanding of what Martin is writing to him.

MR. AGNIFILO: I object. I think it's inflammatory. I think there's no basis for it. I think it's irrelevant. For him to say that's not -- he has no ability to speculate what Martin Shkreli was thinking.

MS. KASULIS: Yes, he does. He's in these exchanges with him.

SIDEBAR CONFERENCE

1 Your Honor, we're making this argument that none of
2 these witnesses were ever harmed and they got their money
3 back, they were made rich.

4 The fact that this individual had a lot of
5 interactions with the defendant that caused him to stress his
6 reaction to Martin's repeated statements, which they interpret
7 as delay and stalling, are entirely relevant to this case, and
8 we should be able to elicit that kind of reaction as his
9 interpretation of what Martin was saying to him.

10 MR. AGNIFILO: The question of what's your reaction
11 has nothing to do with that answer.

12 MS. KASULIS: Yes, it does.

13 MR. AGNIFILO: No, it doesn't.

14 MR. SRINIVASAN: Your Honor, we previously asked the
15 witness about immediate harm including the deprivation and
16 inability to make decisions about economic decisions, and this
17 goes directly to that.

18 MR. BRAFMAN: Well, you've asked him that, and he
19 said he missed opportunities to invest in this last answer.

20 What he said was I believe that Martin was basically
21 trying to scam me. And two days later he gets his money back.

22 MS. KASULIS: But that's then your argument. That's
23 your argument as to why it is the jury should not credit his
24 statement, but that was his reaction at the time. How did he
25 know at that point in time he was going to get his money back

SIDEBAR CONFERENCE

1 in two days?

2 MR. AGNIFILO: He's giving a thought and to question
3 what his reaction is, it's a very discrete answer, I was mad,
4 I was angry, I was disappointed. Not I thought Martin was
5 scamming me.

6 THE COURT: Well, he was expressing his frustration,
7 and based on these months of interactions since he got the
8 notice in September or October of the previous year about the
9 winding down and his initial immediate request for cash
10 redemption. So here it is in April and the question was what
11 was your reaction.

12 I don't think it's appropriate for him to say what's
13 in Martin's mind. But it would be all right for him to react
14 -- for him to answer the question what was your reaction or
15 what did you feel, you know, what was your understanding of
16 what was going on. I think he should avoid testifying to
17 what's in Mr. Shkreli or anyone else's mind at the time.

18 MR. AGNIFILO: So we move to strike that portion of
19 his answer.

20 THE COURT: So what I'll do is I will strike the
21 portion of the testimony that may relate to what's in
22 Mr. Shkreli's mind, but you will be able to elicit what his
23 understanding was of the situation and how he viewed his
24 situation at that time.

25 MR. SRINIVASAN: Okay.

Kocher - Direct - Srinivasan

1 THE COURT: I'll just say on the record that the
2 witness should not testify about what he believes is in
3 someone else's mind, but he may testify about his own reaction
4 to the situation.

5 Would that be acceptable?

6 MR. AGNIFILO: Yes. Thank you, Judge.

7 MS. SMITH: Your Honor, just for the record, we
8 went back and looked at the defendant's statements.

9 THE COURT: Yes.

10 MS. SMITH: We have sliced them thinner than I
11 thought and so there isn't the statement that he disclosed the
12 loan to the limited partners actually is not within the
13 statements so we're not going to circle back to that question.

14 MR. KAPLAN: The fact is that he did not give
15 written --

16 MS. SMITH: He said he gave oral, but we didn't
17 actually put that one in, so we won't circle back to that
18 earlier question.

19 THE COURT: You will not?

20 MS. SMITH: Right.

21 (Sidebar conference concluded.)

22 (Continued on the following page.)

23 Official Court Reporter
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Kocher - Direct - Srinivasan

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2 MR. SRINIVASAN: Your Honor, may I proceed?

3 THE COURT: Just one moment. I'm just trying to
4 find the testimony that I've agreed to strike.

5 MR. SRINIVASAN: Sure.

6 THE COURT: The jury is instructed to disregard
7 testimony regarding what may be in someone else's mind. A
8 witness may testify about what his view or understanding is
9 and what is in his own mind, but we can't have testimony about
10 what may be in someone else's mind.

11 So, Mr. Srinivasan, you may elicit testimony
12 regarding this witness' reaction to the email exchanges that
13 he had with Mr. Shkreli over the course of these months.

14 MR. SRINIVASAN: Yes, Your Honor. Thank you.

15 Q Mr. Kocher, if we go back down actually to the email that
16 we had just read previously.

17 A Yes.

18 Q You said if I don't see an agreement from you by
19 tomorrow, then the deal we have agreed to will be off and I
20 will be forced to have you deal with my lawyer.

21 Do you see that?

22 A Yes.

23 Q Did you, in fact, use a lawyer --

24 A Yes.

25 Q -- after this point?

Kocher - Direct - Srinivasan

1 A Yes. I used David Trachtenberg.

2 Q After Mr. Trachtenberg got involved, did you and the
3 defendant reach an agreement about your redemption?

4 A We did.

5 Q Was it a signed agreement?

6 A Yes.

7 Q I'm showing you Government's Exhibit 107-32 which is tab
8 32 in your binder marked for identification.

9 Do you recognize this document?

10 A Yes.

11 Q What is it?

12 A It's the settlement -- well, it's an email sent from Mr.
13 Evan Greebel to David Trachtenberg.

14 Q Did you receive this document?

15 A Yes.

16 MR. SRINIVASAN: Your Honor, we move to admit
17 Government's Exhibit 107-32.

18 MR. AGNIFILO: 107-32 is the email and the document?

19 MR. SRINIVASAN: Yes.

20 MR. AGNIFILO: No objection.

21 THE COURT: All right. We will receive 107-32.

22 (Government Exhibit 107-32, was received in
23 evidence.)

24 Q Mr. Kocher, in this email Evan Greebel writes on May 14,
25 2014 attached is the dually executed settlement agreement. Do

Kocher - Direct - Srinivasan

1 you see that?

2 A Yes.

3 Q Is there an attachment to this email?

4 A Yes.

5 Q Going to the second page, which is Bates numbered
6 GR0001255. What is this document here?

7 A It's the settlement agreement.

8 Q Now, if we can go to the last page which is Bates number
9 GR0001262 and go one more page.

10 Is your signature on this page?

11 A Yes.

12 Q Where is it?

13 A My signature is at the top left.

14 Q The top left of Government's Exhibit 107-32?

15 A I guess so.

16 Q And do you know whose signatures are on the right-hand
17 side?

18 A Martin's signatures.

19 Q And which entities was the defendant signing for?

20 A He was signing individually. He was signing for
21 Retrophin as the CEO, he was signing for MSMB Capital
22 Management LLC as a managing member; he was signing for MSMB
23 Capital Management LP as the managing member; and he was
24 signing for MSMB Healthcare LP as the managing member.

25 Q Now, let's go back to the second page of this exhibit

Kocher - Direct - Srinivasan

1 which is the Bates numbered GR0001255.

2 A Yes.

3 Q Mr. Kocher, the top says settlement and release
4 agreement. And who are the parties to this agreement in that
5 first paragraph?

6 A The parties are myself and Martin and MSMB Capital
7 Management LP, MSMB Capital LLC, MSMB Healthcare, MSMB
8 Investors, MSMB Management and MSMB entities along with
9 Retrophin.

10 Q Did you have any understanding of why Retrophin was a
11 party to this agreement?

12 A Well, I assumed that.

13 Q At the time did you have any understanding?

14 A Not exactly, no.

15 Q And if we go down the page, the paragraph that says
16 payment terms.

17 A Yes.

18 Q What were the terms?

19 A The payment terms were that they would pay me \$123,711 as
20 a cash payment which was basically in return for that
21 Retrophin stock that was restricted. And then they gave me
22 47,128 shares of common stock.

23 Q Mr. Kocher, if we could be specific. Who agreed to give
24 you the \$123,711 based on this paragraph?

25 A Martin.

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1 Q If you look at the first sentence.

2 A Yeah. Oh, it says MSMB entities or Retrophin
3 individually or collectively to payor agree to deliver or
4 cause to be delivered to releasor the total amount of \$123,711
5 in cash payment. And Shkreli agrees to deliver or cause to be
6 delivered to the releasor the total amount of 47,128 shares of
7 common stock.

8 Q Did you, in fact, receive the \$123,711?

9 A Yes.

10 Q Did you receive the 47,128 shares?

11 A Yes.

12 Q Showing you what's been marked for identification as
13 Government's Exhibit 107-33. It's tab 33 in your binder.

14 Do you recognize this document?

15 A Yes.

16 Q What is this?

17 A This is the common stock that I was given, the 47,128
18 shares of Retrophin.

19 MR. SRINIVASAN: Your Honor, we move to admit
20 Government's Exhibit 107-33.

21 MR. AGNIFILO: No objection.

22 THE COURT: We receive 107-33.

23 (Government Exhibit 107-33, was received in
24 evidence.)

25 Q Mr. Kocher, was it your understanding that these shares

Kocher - Direct - Srinivasan

1 were restricted or unrestricted?

2 A Unrestricted.

3 Q For what company were these shares?

4 A This is from Retrophin.

5 Q Mr. Kocher, did you sell your shares of Retrophin?

6 A Yes.

7 Q And could you describe that process, please.

8 A Well, I briefly described it before, but this was very
9 thinly traded stock. So I have 47,000 shares here and I want
10 to get rid of it the next day, but if I did that the stock
11 would probably go down to \$0.50 a share so I couldn't. The
12 most I could sell was about a thousand to 2,000 shares every
13 week or two. And I had to kind of, you know, check the price
14 and, you know. I had to find out, you know, when it made
15 sense to sell it and it was over a matter of I think six or
16 seven months. I don't remember exactly.

17 Q Did you do this yourself or did you have a broker?

18 A I had a broker. There was only one or two brokers that
19 would even deal with Retrophin. I had a hard time finding
20 them. And -- anyway, it was a painful process because, you
21 know, you can only sell a little bit at a time.

22 Q Approximately how much did you make at the end of the
23 process?

24 A Well, in terms of the actual sales price, it varied. So
25 it went from anywhere from, you know, \$3 up to over \$10 a

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1 share. But, you know, I suppose -- I don't know the exact
2 number. I have to look it up and, you know, review it, but my
3 recollection in terms of the ballpark was that the 200,000
4 that I originally invested became close to 350. But that's
5 without taking into account my time dealing with Martin, you
6 know, this whole process, paying my lawyer, paying for fees
7 and other expenses that I incurred because I didn't have the
8 cash.

9 Q Mr. Kocher, you received the wind down email in September
10 of 2012 which I believe you testified to earlier?

11 A Yes.

12 Q And when did you get these shares?

13 A This was in April sometime, I believe.

14 Q Mr. Kocher, if I could direct your attention to 107-33.
15 Is there a date on these shares? It's tab 33 in your binder.

16 A Oh, yes, there is, May 23, 2013. So it's -- oh, so it's
17 all the way at the end of May.

18 THE COURT: May I ask a question?

19 MR. SRINIVASAN: Yes, Your Honor.

20 THE COURT: You said, sir, that you had invested
21 \$200,000 and it had become \$350,000.

22 Are you talking about the value of your initial
23 investment based on those monthly reports that we saw earlier
24 or are you talking about what you ultimately realized in the
25 cash that you received in settlement plus the shares that you

Kocher - Direct - Srinivasan

1 sold?

2 THE WITNESS: Okay.

3 THE COURT: I want to know what that 350,000 is that
4 you referred to earlier.

5 THE WITNESS: Yeah, the original -- my original
6 money that I put in was 200,000.

7 THE COURT: Right.

8 THE WITNESS: But, yes, I ended up with the cash
9 which was 123,000 approximately, plus the sale of the 47,000
10 shares. So if you added those up you would end up with
11 somewhere in the neighborhood of 350,000.

12 THE COURT: Thank you.

13 MR. SRINIVASAN: One moment, Your Honor.

14 (Brief pause.)

15 MR. SRINIVASAN: No further questions at this time.
16 Thank you.

17 THE COURT: Would the jurors like a break before we
18 take time for the cross examination? All right. Please don't
19 talk about the case, and we will come and bring you back in
20 about ten-to-fifteen minutes. Thank you.

21 (Jury exits the courtroom.)

22 THE COURT: Sir, you can step down and take a break.

23 All right. Let's take a few minutes. Thank you.

24 (Recess taken.)

25 (Continued on the following page.)

KOCHER - CROSS - MR. AGNIFILO

1 COURTROOM DEPUTY: Jury entering.

2 (Jury enters the courtroom.)

3 (Witness takes the witness stand.)

4 THE COURT: All the jurors are present. Please have
5 a seat, everybody.

6 Mr. Agnifilo, if you would like to cross-examine
7 this witness, you may.

8 MR. AGNIFILO: Thank you, Judge.

9 THE COURT: And I remind him that he is still under
10 oath.

11 CROSS-EXAMINATION

12 BY MR. AGNIFILO:

13 Q Good morning, Mr. Kocher.

14 A Good morning.

15 Q My name is Mark Agnifilo. I am one of Martin Shkreli's
16 lawyers.

17 I am going to ask you some questions, won't be
18 terribly law. If I ask you a question and you don't
19 understand my question, please ask me to rephrase it. I'm
20 happy to do that, okay?

21 A All right.

22 Q We will start by referring to some of the documents that
23 are already in evidence.

24 Do you still have your government book up there?

25 A Yes.

KOCHER - CROSS - MR. AGNIFILO

1 Q All right.

2 I'm going to ask you to look at 107-15 which I think
3 is your Tab 15?

4 A Okay.

5 Q Let me get this up here a second. You can see that okay,
6 Mr. Kocher?

7 A Yes.

8 Q All right.

9 So I want to -- I know we talked about this on
10 direct examination. I want to refer you to the bottom of the
11 last paragraph of this document and tell me if I read this
12 correctly.

13 It says, "Based upon this information, I potentially
14 will exercise my rights to weekly redemption (side letter to
15 you) as this is a formal question. I have CC'd your attorney
16 Evan Greebel, my attorney Jim Burke. I expect an expedited
17 response."

18 Do you see that there?

19 A Yes.

20 Q And you see the date of this e-mail is Monday, March 11,
21 2013; correct?

22 A Yes.

23 Q All right.

24 So this here you're making a formal -- you're saying
25 -- you're calling it -- potentially I will exercise my rights

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1 to weekly redemption.

2 Why did you say "potentially"?

3 A Good question. I'm not sure why I would say potentially.

4 Q Well, let's go to the next e-mail, and let's see if this
5 refreshes your recollection as to why you said "potentially."

6 We're going to go to what's been marked as 107-16,
7 and we're going to look at the top of the e-mail here.

8 Do you see that here?

9 A Yes.

10 Q All right.

11 So this is March 12th. This is the day after the
12 e-mail we just looked at where you said you potentially
13 exercised your redemption. And what you're saying here, and
14 I'm looking at the top e-mail from March 12th at 4:52 p.m.,
15 it's from you to Martin; correct?

16 A Yes.

17 Q And it's copied to Evan Greebel, a lawyer. Correct?

18 A Yes.

19 Q And you said on direct that was Martin's personal lawyer?

20 A I didn't say "personal," I don't believe. I might have
21 said it was Martin's lawyer, but it was my understanding that
22 it was either Martin's lawyer or the lawyer for MSMB.

23 Q Okay.

24 Do you have an understanding it was MSMB'S lawyer
25 and then later Retrophin's lawyer.

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1 Do you have that understanding?

2 A No.

3 Q You said you have a lawyer there representing you named
4 Jim Burke?

5 A Yes.

6 Q Okay.

7 And I want to read the last two partial sentences
8 here starting with, "I would assume." Do you see that there?
9 It's the second line on the top e-mail to the right.

10 A Yes.

11 Q Okay. It says, "I would assume my account value would be
12 higher to compensate for illiquidity, so how many shares are
13 you giving me?"

14 You see where you say that?

15 A Yes.

16 Q Your negotiating there, isn't that fair?

17 A I felt like there was a negotiation going on the whole
18 time.

19 Q Right. Okay.

20 And you think Martin's negotiating with you, and
21 you're negotiating with Martin; correct?

22 A Well, the thing was I was trying to find out what my
23 account value was.

24 Q But that's not what you're doing here; right?

25 A No, but I did on numerous occasions try to get --

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1 Q But you were --

2 A My main account --

3 Q I'm talking about a specific e-mail --

4 THE COURT: Sir, you both can't talk over each
5 other. So he was speaking, let him finish.

6 Q Go ahead. You said you had something you wanted to say.

7 A Yes. I tried for months to try to find out what my
8 account value was and I never got a straight answer on it.

9 Q So let's talk for a second again about Government's
10 Exhibit 107-16, okay?

11 Talking about Government Exhibit 107-16. What
12 you're saying is, "I would assume my account value would be
13 higher to compensate for illiquidity. How many shares are you
14 giving me?"

15 You're not asking for cash in that statement;
16 correct?

17 A In that statement, but that's because, at that point,
18 they weren't offering me cash. Even though they said they
19 were going to give me cash, from what I knew, they were
20 offering Retrophin stock.

21 Q So what you're doing here is you're not asking for cash
22 in this statement, yes or no?

23 A In this I'm not asking for cash, not in this statement.

24 Q Okay.

25 What you're asking for in this statement -- what

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1 you're saying is, "So how many shares are you giving me?"

2 That is what you want the answer to be; correct?

3 In this statement, that's what it says; right?

4 A In this statement, yes.

5 Q And what you're also saying in the partial sentence
6 before is you want more shares because of the illiquidity of
7 the Retrophin shares --

8 MR. SRINIVASAN: Objection.

9 Q -- true?

10 THE COURT: Sustained.

11 Q Is that what you're asking?

12 THE COURT: I sustained the objection.

13 Q When say, "I would assume my account value would be
14 higher for compensate for illiquidity, what are you saying?

15 MR. SRINIVASAN: Objection. He's not reading the
16 whole sentence.

17 THE COURT: Sustained.

18 Q I will read the whole thing. Let's read the entire
19 e-mail.

20 My's last account value was \$280,000 and it was in a
21 diversified healthcare portfolio, MSMB, which was net neutral.
22 If my redemption is in Retrophin shares which are thinly
23 traded, then I would assume my account value would be higher
24 to compensate for illiquidity."

25 Right? That's what you wrote?

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1 A That's correct.

2 Q Okay.

3 And is what you're saying there that because of the
4 illiquidity of the Retrophin shares you want more?

5 A That's correct, but I would prefer cash. But, at that
6 point, I didn't know that, you know, it seemed to me I wasn't
7 going to be able to get the cash. That was my problem. What
8 I needed was, you know, I needed liquidity at that point, not
9 Retrophin shares even though I'm talking about it here. But
10 that's because my feeling was that was the only way I was
11 going to get my money back.

12 Q But what you want is you want more Retrophin shares. You
13 want a number of Retrophin shares to make up for the fact that
14 the Retrophin shares are thinly traded or illiquid; correct.

15 MR. SRINIVASAN: Asked and answered.

16 THE COURT: Sustained.

17 Q I mean, you agree with me that here you are negotiating
18 with Martin; correct?

19 MR. SRINIVASAN: Objection.

20 THE COURT: Sustained.

21 Q Did you get an answer about how many shares he would give
22 you?

23 A No.

24 Q Now, did you have an idea as you wrote this what you
25 thought would be fair?

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1 A My problem was I needed cash and, you know, I was just
2 trying to get my money back any way I could do it. But the
3 problem was, I didn't know what my account balance was. So I
4 had been told that it was at the end which I didn't get
5 statements for -- this was in 2012 -- that it was worth,
6 approximately, 280,000. That was for account balances that I
7 never got statements for.

8 Q You'll agree with me that the purpose of this e-mail is
9 to see how many shares of Retrophin you could get; correct?

10 MR. SRINIVASAN: Objection.

11 THE COURT: Sustained.

12 MR. AGNIFILO: Your Honor, can we go to the side?

13 THE COURT: Yes.

14 (Continued on the next page.)

15 (Sidebar conference.)
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SIDEBAR CONFERENCE

1 (Sidebar conference held on the record in the
2 presence of the Court and counsel, out of the hearing of the
3 jury.)

4 THE COURT: The problem is you're repeating. You're
5 going over it. He already explained that at this point he was
6 asking for shares because he wasn't --

7 MR. AGNIFILO: I don't have to accept that answer.

8 THE COURT: I know. But you're repeating the same
9 question. You asked and answered -- the objection is asked
10 and answered. You've gone over this already.

11 MR. AGNIFILO: But he volunteers things that
12 undermine the answer. I have a right to refocus the jury
13 on -- I don't think it's asked and answered.

14 THE COURT: I can go back and look at it and show
15 you.

16 MR. AGNIFILO: The point is, Judge, I have -- I
17 don't of it accept his answer.

18 THE COURT: Of course you don't. You keep asking
19 the same question over and over again. That's what you're
20 doing, you're asking him the same question.

21 At this point, you wanted shares, didn't you? You
22 already asked that and you already got an answer, so why do
23 you want to ask him again.

24 MR. AGNIFILO: Because he backs off the answer by
25 continuing to narrate things that aren't part of the question

SIDEBAR CONFERENCE

1 but I'll move on.

2 THE COURT: Please avoid repeating your same
3 questions over and over again.

4 Thank you.

5 (Sidebar discussion concludes.)

6 (Continued on the next page.)

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KOCHER - CROSS - MR. AGNIFILO

1 (In open court.)

2 CROSS-EXAMINATION

3 EXAMINATION BY

4 MR. AGNIFILO:

5 (Continuing.)

6 Q Sir, how many shares did you expect?

7 A I was expecting cash. So I'm saying here, "If my
8 redemption is in Retrophin shares" because they're telling me
9 they want to give me Retrophin shares.

10 Q And since you're asking for Retrophin shares, how many
11 are you expecting?

12 A I'm trying to get my \$280,000 back that I believe my
13 account balance was in cash. So, if it's Retrophin, I would
14 expect more shares because it's thinly traded; however, that
15 wasn't my preference. It was to get Retrophin shares.

16 Q Now, you know how to negotiate as part of your business;
17 correct?

18 A I would hope so.

19 Q Okay.

20 Tell us a little bit about your business again. I
21 know you talked about it on direct examination.

22 A I'm a contractor, so I build for individuals and do
23 brownstones in Hoboken and Jersey City. And I also build
24 buildings and, you know, buy property and build from scratch,
25 new construction.

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1 Q And do you hire subcontractors?

2 A Yes.

3 Q And how many subcontractors are in a typical brownstone
4 project?

5 A Brownstone project, if it's just a renovation, may only
6 be four or five. On a bigger project, if it's new
7 construction, it may be up to 15 or 20.

8 Q And you have to negotiate at times with these
9 subcontractors; correct?

10 A Yes.

11 Q And the purpose of your negotiation is within the bounds
12 of fairness, obviously, for you to make as much as money in
13 the overall deal as possible; correct?

14 A It's more on performance, you know. You get two or three
15 bids in, so you don't necessarily take the low bid, you try to
16 get someone who is going to actually perform on time and do
17 the job right.

18 Q And when the bids come in, do you sometimes negotiate
19 with the subcontractors on the bid?

20 A Sometimes, yeah.

21 Q And you try to get the bid lower?

22 A Sometimes, but not always. No.

23 Q Have you ever negotiated with a subcontractor so the bid
24 would go higher?

25 A Sometimes.

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1 Q You want them to charge you more?

2 A If I want a better product, yes.

3 Q Okay.

4 And sometimes you want to have the bid be lower;
5 correct?

6 A Yes.

7 Q Because that's how you make more money?

8 A Right.

9 Q So this is part of what you do professionally is you
10 negotiate with people; fair to say?

11 A Yes, but my --

12 Q I have no other question.

13 A Okay.

14 Q I'm going to turn your attention to what's been marked in
15 evidence as Government 107-22.

16 Now, you say in this e-mail, this portion here from
17 March 15, 2013, from 2:38 p.m. do you see that e-mail here?

18 A Yes, uh-huh.

19 Q And you send that e-mail to Martin; correct?

20 A Yes.

21 Q And it's to your lawyer at the time, Jim Burke; correct?

22 A That's correct.

23 Q Is Tier White; correct?

24 A Yes.

25 Q And kevin@stonecornergroup. Who is that?

KOCHER - CROSS - MR. AGNIFILO

1 A That's Kevin Mulleady.

2 Q Kevin is on this e-mail chain; correct?

3 A Yes.

4 Q You continue to have some relationship of some sort with
5 Kevin Mulleady?

6 A Yes.

7 Q Do you continue to have a friendship or social
8 relationship with Kevin Mulleady?

9 A Yes.

10 Q So going seven lines down of that one-block e-mail, it
11 says, "I have already been in touch with counsel that is
12 versed in this kind of litigation."

13 Do you see that?

14 A Yes.

15 Q You want Martin to know that you have a lawyer ready, if
16 need be, who you say is well versed in this kind of
17 litigation; fair to say?

18 A Yes.

19 Q And you then, two lines below that, you go on to say, "I
20 also believe that as a manager of MSMB and CEO of Retrophin
21 that you have not lived up your fiduciary responsibilities to
22 me as LP, limited partner." Right?

23 A Right.

24 Q "And I will require a full accounting of both MSMB,
25 Retrophin, and your financial involvement."

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1 Then you say, "Also, I will make sure that this does
2 go public and will also go to the appropriate agencies."

3 Do you see that?

4 A Yes.

5 Q Now, you knew that Martin was the manager of MSMB;
6 correct?

7 A Yes.

8 Q And he was the CEO of Retrophin?

9 A Yes.

10 Q You understand that he founded Retrophin?

11 A No.

12 Q You didn't know that?

13 A No.

14 Q That he started Retrophin?

15 A No.

16 Q Do you know how Retrophin started?

17 A No.

18 Q Mulleady never told you how Retrophin started?

19 A No, I thought Retrophin was already a company that he
20 acquired.

21 Q Okay.

22 You thought he acquired Retrophin?

23 A Yes.

24 Q So you have no knowledge that he actually had the idea
25 and started it and founded it himself; correct?

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1 A That's correct.

2 Q Now, at this point, you are trying to get as much out of
3 your investment as possible; correct?

4 A I'm just trying to get my investment back.

5 Q You would have been happy with \$200,000 cash?

6 A \$200,000 cash would have done me very well at that point
7 because that was right about the time when I was trying to
8 close on this property. And I wouldn't have had to bring in
9 an extra partner, which basically took 49 percent of this
10 whole project from me.

11 Q So you talked about this pretty extensively on direct
12 examination. What was you and your business going through
13 precisely at March 15, 2013?

14 A We had a contract on two properties. One of them was one
15 that was going to close that actually did close in April, and
16 it was a property in Jersey City that comprised of three lots.

17 Q And you needed quick liquidity for that project?

18 A In order to buy it, I put money down. But I needed the
19 balance of the deposit to purchase it.

20 Q On direct examination, you didn't testify at all about
21 anything regarding an MSMB Healthcare Private Offering
22 Memorandum; correct?

23 MR. SRINIVASAN: Objection, your Honor.

24 THE COURT: Overruled.

25 A I don't know. No, I guess not.

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1 Q Do you know what that is?

2 A The Private Offering Memorandum?

3 Q Right.

4 A It was probably a MSMB part of the paperwork.

5 Q Did you read it?

6 A Probably, yes. I don't remember, specifically. I read a
7 lot of stuff. This is about MSMB. I did read stuff
8 originally but that was, you know, now 2012, so that's five
9 years ago.

10 Q Now, did you read the MSMB Healthcare, LP, Private
11 Offering Memorandum before you invested?

12 A I assume I did.

13 Q Can you recall, as you're sitting here today, whether you
14 read it or not?

15 A I read paperwork on MSMB. I don't remember specifically
16 what I read.

17 Q Do you remember being advised that the general partner
18 will have the right to suspend the redemptions.

19 Do you remember reading that in the paperwork?

20 A No.

21 Q Did you read the entire document that you got?

22 A I probably did. I just don't remember specifics right
23 now.

24 Q Wouldn't that have been a significant thing to have read?

25 A Yeah.

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1 Q If, in the Private Offering Memorandum, it specifically
2 said that the general partner, at the general partner's own
3 discretion, can suspend redemptions, that would be significant
4 to you?

5 A Yes.

6 Q Because what you're saying what you wanted most of all
7 was ready liquidity; correct?

8 A That's correct.

9 Q So because you want ready liquidity, you invest in a
10 hedge fund that invests in healthcare stocks. That was your
11 decision?

12 A Part of the -- one of the statements that was in MSMB
13 before I actually did invest with them did say that they were
14 liquid, and that they were a diversified fund that was liquid,
15 and that we would be able to get our money back out in one
16 month. That's what I remember. That's what I went on.

17 Q That's one of the things that's also in the Private
18 Offering Memorandum; correct?

19 A Okay.

20 Q But also in the Private Offering Memorandum, it says that
21 the general partner can suspend that.

22 Is this news to you?

23 A Yes.

24 Q It's news to you?

25 A Yes.

KOCHER - CROSS - MR. AGNIFILO

1 Q You've never heard of this before today?

2 A No.

3 Q And this is -- you have the Private Offering Memorandum
4 in your possession; correct?

5 A I probably did, yes.

6 Q When this was also going on, you were having a hard time
7 getting your money out.

8 Did you go back and look at it?

9 A No one is going to say they were going to suspend
10 redemption.

11 Q Did you see what the rules were?

12 A Like I said, from my -- from what I knew, there was no
13 suspension of redemption.

14 Q Right. But my point is, did you ever, at any point while
15 this was going on, go back and take a look at any part of the
16 Private Offering Memorandum?

17 A No, I didn't.

18 Q Now, looking at Government's Exhibit 107-23 that's
19 already in evidence, already. And I'm looking at Martin's
20 e-mail to you from Thursday March 21, 2013, at 10:27 p.m.

21 Do you see that part?

22 A Yes.

23 Q And, at this point, he said, "Hi, Rich, we've decided to
24 double the shares you've received."

25 You see that there?

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1 A Yes.

2 Q And then, in response to Martin just above, you say, I
3 think it looks like the next day March 22nd at 10:38 a.m.,
4 "Doubling the shares doesn't cut it."

5 Correct?

6 A Yes.

7 Q At this point, you guys are in a full-blown negotiation
8 over the number of shares; fair to say?

9 A Well, again, I'm at the time I'm looking for cash. He's
10 not offering me cash, that's the problem.

11 Q But, at this point, you'll agree with me that what you're
12 saying is that doubling the shares won't cut it; right?

13 A That's correct. In other words, doubling the shares
14 isn't going to give me back my account value.

15 Q All right. Because what you say is, "It will not bring
16 me back it my account 280K which was my last account balance
17 and it's not liquid."

18 Correct?

19 A That's right.

20 Q But you go on to say, but as you said it will be a start
21 to a solution; right?

22 A Yes.

23 Q Okay. You're inviting him to do better; correct?

24 A Well, I'm hoping he's going to give me some cash
25 somewhere along the line.

KOCHER - CROSS - MR. AGNIFILO

1 Q But you agree with me that in this statement you don't
2 ask for cash; right?

3 A That's correct.

4 Q He says that he'll double the shares and you're off to a
5 good start; correct?

6 A I'm not saying it's a good start.

7 Q What you are saying is --

8 A That --

9 Q It's a start to a solution, I'm sorry. Right?

10 A Yes.

11 Q It's a start to a solution, that's what you said.

12 Now, at this point, did you have an idea of what
13 number of shares you would accept?

14 A Again, I was still trying to get cash.

15 Q Do you recall in any of these e-mails or conversations
16 with Martin if you specifically asked for cash at this time?

17 A Yes. I did ask for cash, but what he started out by
18 doing was giving me restricted shares of Retrophin. But it
19 was always my understanding that we had a choice of cash or
20 Retrophin or a combination.

21 Q But you would agree with me at this point how many shares
22 of Retrophin you're going to get because you're not willing to
23 accept merely doubling of his first offer; correct?

24 MR. SRINIVASAN: Objection, your Honor.

25 THE COURT: Overruled.

KOCHER - CROSS - MR. AGNIFILO

1 A Again, my feeling was I needed cash, he's not offering me
2 cash. If he's going to offer me Retrophin, it's not worth as
3 much to me.

4 Q So you want more?

5 A Yeah. I preferred cash, though. But, yes.

6 Q Listen, I understand you prefer cash. You have made that
7 so clear.

8 A Okay.

9 Q All right. And I won't forget it.

10 But what you're actually talking about is you want
11 more shares; correct?

12 A Than what he's offering here, yes.

13 Q Good. Okay. Let's go on.

14 Government Exhibit 107-26 it's in evidence. You see
15 the e-mail that you send to Martin from Wednesday, March 27th,
16 at 8:41 p.m.?

17 A Yes.

18 Q Okay.

19 And you say, "Well, I'm willing to be patient, but
20 the bank wants to see liquid assets in order for me to close a
21 large real estate deal."

22 That's the deal you just told us about five minutes
23 ago; correct.

24 A That's correct.

25 Q The one in Hoboken; correct?

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1 A No, that --

2 Q Jersey City?

3 A I had two deals at the time. One was Jersey City, one
4 was Hoboken.

5 Q Got it. "I really can't afford to lose the deal."

6 A Why.

7 Q You got yourself overleveraged in these real estate
8 transactions; correct?

9 A No, not really. What I had relied on was what Martin had
10 said which was that by the end of 2012 that I would get my
11 money back in cash or in Retrophin stock, whichever I wanted.
12 So I had assumed that I got into these deals in 2012, okay?
13 So in 2012, I had both deals and I expected to get my account
14 balance back by the end of the year in 2012.

15 We're all the way into 2013 here at the end of March
16 and, you know, that's -- the problem was that, you know, I had
17 expected to be taken care of long before this.

18 Q Now, did you ever send the Private Offering Memorandum to
19 the attorney that you had been working with at the time?

20 A I don't remember. I don't recall.

21 Q You don't have any recollection as to whether you sent
22 the Private Offering Memorandum to the lawyer one way or the
23 other?

24 A No.

25 Q Wouldn't that have been an important thing for the lawyer

KOCHER - CROSS - MR. AGNIFILO

1 to know?

2 A He may have asked for it; I might have sent it. I don't
3 remember.

4 Q Okay. We're going to go ahead a few.

5 What we're looking at now is
6 Government Exhibit 107-29. I think it's Tab 29 in your book.

7 A Yes.

8 Q I will put it up on the screen. It's in evidence.

9 You see your e-mail to Martin. It's April 3, 2013,
10 at 2:21 p.m.

11 Do you see it?

12 A Yes.

13 Q You say, "Martin, now, we're going on another two weeks,
14 and again, you're putting me in a bad situation."

15 Correct?

16 A That's correct.

17 Q All right.

18 And you say, "two weeks," because the first time
19 that you say that you're going to exercise your right to
20 weekly redemptions was March 11, 2013; correct?

21 A I believe that's right.

22 Q All right.

23 "So it's going on two weeks, and again, you're
24 putting me in a bad situation. If I don't see an agreement
25 which tomorrow then the deal we have agreed will be off and I

KOCHER - CROSS - MR. AGNIFILO

1 will forced to have you deal with my lawyer."

2 Do you remember what deal you and he had agreed to
3 at that point in time?

4 A It wasn't entirely clear because he had offered me cash
5 and stock and also more stock at a later date. So there was
6 no -- that was the problem. I never knew what my account
7 value was, I never knew what the actual deal was. At this
8 point, honestly, I don't remember right now what it was.

9 Q Okay. But you're referring to a specific deal. I mean,
10 you're saying --

11 A We spoke on the phone about -- yes. When we spoke on the
12 phone, he told me that he was going to give me a certain
13 amount of stock in cash, I believe.

14 Q Okay. Because you were saying, "Then the deal we have
15 agreed to will be off."

16 A Right.

17 Q So you and he agreed to a deal with specific terms as of
18 April 3, 2013.

19 A They weren't specific enough.

20 Q But you don't say that in the e-mail, do you?

21 A I don't say that here, no.

22 Q No, you refer to a specific deal. "Then the deal will be
23 off." That's what you say; right?

24 A Yeah, but I think if you look at an earlier e-mail, it
25 does say -- I think he was offering me cash and stock, but he

KOCHER - CROSS - MR. AGNIFILO

1 was also promising me more stock which was nebulous as to how
2 much.

3 Q Okay.

4 So what you're saying here when you're referring to
5 the deal that will be off, you don't know what the terms are
6 and you think the terms were vague. Is that what you're
7 telling you us?

8 A Yes.

9 Q All right.

10 Now, he then says at the top, and this is the e-mail
11 from Martin to you, April 3, 2013, 2:49 p.m.

12 At the end, it says, "I don't know what Kevin told
13 you but it's not accurate."

14 Do you see that he wrote that to you?

15 A Yes.

16 Q Now, fair to say you were brought in to MSMB by Kevin
17 Mulleady; correct?

18 A That's correct.

19 (Continued on the next page.)
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KOCHER - CROSS - MR. AGNIFILO

1 (Continued)

2 CROSS EXAMINATION

3 BY MR. AGNIFILO:

4 Q Now I know you testified about this on Friday on direct,
5 how do you know Kevin Mulleady?

6 A He was an account manager for me and a financial advisor
7 at Smith Barney.

8 Q Starting in 2010?

9 A Approximately.

10 Q You have grown to know him and trust him?

11 A Yes.

12 Q It was really Kevin Mulleady that told you that he
13 thought MSMB Healthcare would be a good investment for you.

14 A Correct.

15 Q You followed his advice?

16 A Yes.

17 Q Have you ever spoken with Martin before deciding to
18 invest?

19 A No.

20 Q Have you ever met Martin Shkreli?

21 A No, not in person. I talked to him on the phone.

22 Q So right here in this very courtroom is the first time,
23 to your knowledge, that you and Martin Shkreli are in the same
24 room at the same time?

25 A Yes, well, yes.

KOCHER - CROSS - MR. AGNIFILO

1 Q Yes, right?

2 A Yes.

3 Q Are you hesitant? Was there another time?

4 A Well, Friday.

5 Q That's a good witness. That was terrific. You're right,
6 very good. One for the witness.

7 Other than Friday, so Friday was a first time that
8 you Martin Shkreli were at the same room at the same time?

9 A That's correct.

10 Q Now at one point you engage David Trachtenberg as your
11 attorney?

12 A That's correct.

13 Q And Mr. Trachtenberg is going to try to reach a
14 settlement with Martin and Evan Greebel, correct?

15 A That's correct.

16 Q And eventually a settlement is reached, correct?

17 A Yes.

18 Q There is a settlement agreement dated May 13 that is
19 Government's Exhibit 107-32?

20 A Yes.

21 Q I know you read part of this on direct examination --
22 incidentally, do you recall -- and I'm just changing the
23 subject for a second, do you remember when you identified
24 Mr. Shkreli in court on Friday?

25 A No.

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1 MR. SRINIVASAN: Objection.

2 Q You didn't?

3 A I don't believe I did.

4 Q Do you see him in court?

5 A Yes.

6 Q How do you know it's him?

7 MR. SRINIVASAN: Objection.

8 THE COURT: Sustained.

9 Q That's fine, that's fine. You know what he looked like.

10 A Yes.

11 Q Not because you've ever met him.

12 MR. SRINIVASAN: Objection.

13 THE COURT: Sustained.

14 Q Okay. Let's get back to the settlement here. You have
15 it in front of you?

16 A Yes.

17 Q So it says that, "This settlement and release agreement
18 is made and entered as of May 13, 2013, by and among you
19 Richard Kocher, Martin Shkreli." The first thing it's
20 personal to Martin Shkreli, you're settling first personally
21 with Martin Shkreli, correct?

22 A Yes.

23 Q Then MSMB Capital management LP, do you see that?

24 A Yes.

25 Q Settling with them as well?

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1 A Yes.

2 Q Also settling with MSMB Capital Management LLC, correct?

3 A Yes.

4 Q You're settling MSMB Healthcare LP, do you see that?

5 A Yes.

6 Q You're settling with MSMB Healthcare Investors LLC, do
7 you see that?

8 A Uh-huh.

9 Q You have to answer yes or no.

10 A Yes.

11 Q You're settling with MSMB Healthcare Management LLC,
12 correct?

13 A Yes.

14 Q You're settling with MSMB Capital LP, right?

15 A Yes.

16 Q Then a whole collection of MSMB entities, correct?

17 A Yes.

18 Q Then you're also settling with Retrophin, correct?

19 A Yes.

20 Q Now was it your understanding at the time that you
21 entered into the settlement agreement that Retrophin was a
22 fairly young company?

23 A I wasn't aware of the age of Retrophin.

24 Q Okay. And were you aware -- and you said that you
25 believe that Martin had acquired Retrophin, right?

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1 A Yes.

2 Q Fair to say that -- what you're agreeing here is that
3 you're not going to bring any lawsuits against all of those
4 entities, correct?

5 A Yes.

6 Q You're also -- so you're not going to sue any of these
7 entities, correct?

8 A That's correct.

9 Q It's obviously a benefit to have an agreement with the
10 party that could be involved in litigation with you that they
11 agree that they are not going to sue you, correct?

12 A That's correct.

13 Q So fair to say Retrophin was getting something out of
14 this agreement from your perspective?

15 MR. SRINIVASAN: Objection.

16 THE COURT: Overruled.

17 Q Retrophin was getting an assurance that you weren't going
18 to sue them, correct?

19 A Yes.

20 Q And you had a lawyer lined up, correct?

21 A Yes.

22 Q At the end of the day as part of this settlement
23 agreement you got some cash and you got some shares, correct?

24 A That's correct.

25 Q The cash portion was \$122,700 correct?

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1 A Yes.

2 Q Cash wired to your account?

3 A Yes.

4 Q Then you got 47,128 shares of Retrophin, correct?

5 A That's correct.

6 Q You said that was those were freely tradeable shares,
7 correct?

8 A Yes, they were common stock.

9 Q Right, right. And you said that the stock is thinly
10 traded so you can't sell them in one big block like you can
11 with IBM or Google?

12 A Yes.

13 Q You have to sell them in tranches?

14 A Yes.

15 Q Do you remember if you sold them between July and October
16 of 2013?

17 A I had to start selling them right away. The stock was
18 very low, so I started selling them in May.

19 Q All right. And do you recall --

20 A May, June, July.

21 Q Right. And do you recall about the average price was
22 about \$6 a share?

23 A It was less than that to start with.

24 Q How much less?

25 A It ranged between, I know I sold some for \$4 a share, and

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1 some, a lot of it was four and \$5 a share. I think it went
2 down as low as three at one point. But basically it was
3 between four and seven is where I sold most of them.

4 Q Do you have a clear recollection what you sold it for?

5 A No.

6 Q Do you recall that you sold it, for the most part,
7 between six and \$8 a share?

8 A No, I'd say as I recall, it would be closer to four to
9 seven.

10 Q And do you recall that you sold the vast majority of the
11 shares for more than \$6 a share?

12 A No, I don't remember that.

13 Q I'm going to refresh your recollection. I'm going to ask
14 you a number of questions, my only questions for the time
15 being, sir, is if this refreshes your recollection.

16 A Okay.

17 Q Do you recall on June 11, 2013, selling a number of
18 shares for \$6 and 48?

19 A No, I don't remember specifically any of them. But if
20 you have documentation that says I did, then I believe you.

21 Q Well, that's your first mistake.

22 Do you remember on June 13 the high was 6.20 and the
23 low was 5.85, only if you remember?

24 A No, I don't remember. I'm sorry.

25 Q That's all right. Incidentally, who is Victor Abadia?

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1 A Victor was the person that I used to do the trading, to
2 sell the stock.

3 Q He's the one who actually sold the stock?

4 A That's correct.

5 Q Fair to say that almost every day Victor would send you
6 an e-mail, every day that the markets that were open, Victor
7 send you an e-mail with what number of shares he was able to
8 trade that day, right? Do you recall that?

9 A No, I don't. But I think it was more like weekly not
10 daily.

11 Q Do you remember sometimes multiple e-mails in one day
12 from Victor?

13 A I'm sure that happened.

14 Q He always indicated what the price was, do you remember
15 that?

16 A Yes.

17 Q So he would tell you what the price was and he would tell
18 you what number of shares he was able to sell?

19 A Right.

20 Q Do you recall the vast majority of the sales were over \$6
21 a share?

22 A I don't remember.

23 Q What was your recollection of how much you made on this
24 investment?

25 A Well, if you don't subtract out lawyer fees and my time

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1 and everything else then, my thinking was that it was in the
2 realm of 350,000.

3 Q So then your \$200,000 investments netted you \$350,000,
4 correct?

5 A Well, the profit on the 200 was maybe 150 or more.

6 Q Okay. So the \$200,000 that you invested in 2012,
7 resulted in about \$350,000 after the Retrophin shares were
8 sold in what you're saying is in the fall of 2013, correct?

9 A Yes, something like that, probably slightly over 350, but
10 in that realm.

11 Q Did you pay Martin any fee for your profit?

12 A Why would I?

13 Q Is that yes or no?

14 A No.

15 Q And I'll answer your question.

16 THE COURT: Excuse me, you're not testifying, sir.

17 Q Isn't it true that one of the reasons you might pay him a
18 fee is because you made \$150,000 in the course of about a
19 year-and-a-half?

20 A No. I wouldn't know why I would pay him a fee for that.
21 The thing is for me, I spent five months just trying to get a
22 settlement. Then I spent another five months trying to sell
23 the stock. So you know, I'm sure my time is not worth what
24 you're time is worth, but at any rate my time is worth
25 something and I spent a lot of time. And I'm here today

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1 spending time where I'm getting nothing, I'm away from my
2 business. So that on top of the fact that I had counted on
3 having the capital by April, so I could close this real estate
4 deal, that cost me a lot of money.

5 Q Just so we're clear, you said five months, but you agree
6 with me that you sent that e-mail making a request for
7 redemption on March 11, 2013, correct? If you need to see it
8 again I it can show it to you.

9 A I remember it.

10 Q Do you agree with the timing?

11 A That's correct but I was trying to get --

12 Q That's the only question. Did you send that e-mail
13 asking for your redemption on that date?

14 A Yes.

15 Q March 11.

16 A Yes.

17 Q You got the stock certificate on May 23, 2013, correct?

18 A Correct.

19 Q Basically two months and 12 days later, correct?

20 A What was the date you said, May what?

21 Q March 11 was that e-mail redemption e-mail, then the
22 stock certificate is dated May 23, 2013.

23 A That's correct.

24 Q Kevin Mulleady recently lent you money, correct?

25 A That's true.

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1 Q When was that?

2 A I don't remember exactly.

3 Q How much was it?

4 A 100,000.

5 Q You told him you'd pay him back right away, correct?

6 A No.

7 Q You didn't tell him that? You didn't tell him it was a
8 short-term loan?

9 A No.

10 Q Did you pay him back right away?

11 A No.

12 Q When did you pay him back?

13 A I don't know exactly, but it was probably two-and-a-half
14 years later.

15 Q So from time to time the nature of your business causes
16 you to be in a cash crunch; fair to say?

17 A Yes.

18 Q Fair to say that there are times when your business is
19 cash poor, correct?

20 A Yes.

21 Q And your business is cash poor but you have projects that
22 you're working on that you think will be profitable, correct?

23 A That's correct.

24 MR. AGNIFILO: One second, Judge. No other
25 questions.

KOCHER - REDIRECT - MR. SRINIVASAN

1 THE COURT: Any redirect, Mr. Srinivasan?

2 MR. SRINIVASAN: Yes, your Honor, just briefly.

3 REDIRECT EXAMINATION

4 BY MR. SRINIVASAN:

5 Q If we can pull up Government's Exhibit 107-12 in
6 evidence. If we can zoom in on the top there.

7 Mr. Kocher, this is the e-mail that you got
8 notifying you that the MSMB Healthcare was shutting down; is
9 that right?

10 A That's correct.

11 Q The date on this is?

12 A This is September 9, 2012.

13 Q You got your shares about on September 23 -- May 23 of
14 2013; is that right?

15 A That's correct.

16 Q That's a nine month --

17 MR. AGNIFILO: I'm going to object, leading his
18 witness.

19 THE COURT: Try to rephrase.

20 How much time between September 9, 2012 and May 27,
21 2013.

22 THE WITNESS: It's approximately nine months.

23 BY MR. SRINIVASAN:

24 Q During that nine-month period, did the defendant ever
25 tell you that redemptions were suspended from MSMB Healthcare?

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1 A No, he did not.

2 MR. SRINIVASAN: Thank you, no further questions.

3 MR. AGNIFILO: Nothing, Judge.

4 THE COURT: You're excused. Thank you for your
5 time.

6 (Whereupon, the witness was excused.)

7 MR. SRINIVASAN: We're ready to call the next
8 witness, Schuyler Marshall.

9 (Witness takes the witness stand.)

10 SCHUYLER B. MARSHALL, called as a witness, having been first
11 duly sworn/affirmed, was examined and testified as follows:

12 THE WITNESS: I do.

13 THE COURT: State and spell your full name.

14 THE WITNESS: S-C-H-U-Y-L-E-R, B., M-A-R-S-H-A-L-L.

15 THE COURT: Thank you, please proceed.

16 MR. SRINIVASAN: Thank you, your Honor.

17 DIRECT EXAMINATION

18 BY MR. SRINIVASAN:

19 Q Good morning, sir.

20 A Good morning.

21 Q How old are you?

22 A Seventy-one.

23 Q Are you married?

24 A Yes.

25 Q Any kids?

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1 A Three children.

2 Q Any grandkids?

3 A Two.

4 Q Where do you live?

5 A Dallas, Texas.

6 Q How long have you lived in Dallas?

7 A Since 1970.

8 Q Could you please briefly describe your educational
9 background to the jury?

10 A Yes, I attended University of Texas undergraduate, and
11 then went to University of Texas Law School graduating in
12 1970.

13 Q What did you do after law school?

14 A I went to Dallas, started working for a law firm called
15 Thompson & Knight.

16 Q Did you specialize in any area of law?

17 A Yes, litigation.

18 Q How long did you work for Thompson & Knight?

19 A Twenty-five-and-a-half years, until right at the end of
20 '95.

21 Q What did you do after that?

22 A I had represented a client called Rosewood Corporation in
23 a significant matter, and they essentially hired me away to go
24 in-house with them as initially general counsel and Senior VP
25 of finance. And they subsequently with this was kind of a

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1 hand shake, they said, if you work out, don't get fired,
2 you're at will basis, if it works out the guy that was running
3 it wanted to have me as his successor, so within three years I
4 became CEO.

5 Q What is the Rosewood Corporation?

6 A A private corporation owned by a trust that engages in a
7 variety of different activities, such as ranching, oil and gas
8 drilling, both in domestically and in that sector of the North
9 Sea. Real estate development. Investment we called Rosewood
10 Private Investment, investments in small companies that we can
11 provide guidance or capital to help them grow.

12 Probably best known for the hotel business, Rosewood
13 Hotel and Resorts. In fact, one of our hotels is in New York,
14 The Carlyle; however, we sold the hotel business about four
15 years ago.

16 Q What is your position at the Rosewood Corporation?

17 A Now I'm Chairman of the Board.

18 Q Do you know an individual named Martin Shkreli?

19 A Yes, I do.

20 Q Have you met him in person?

21 A Yes.

22 Q Approximately when was the first time you met him?

23 A It was sometime in the summer of 2010.

24 Q Do you see him in the room today?

25 A Yes.

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1 Q Can you point him out and identify him by a piece of
2 clothing?

3 A Well, he's got on a white shirt, no tie, and gray sport
4 coat or suit.

5 THE COURT: We will note that Mr. Marshall has
6 identified Mr. Shkreli.

7 MR. SRINIVASAN: Thank you, your Honor.

8 Q Mr. Marshall, what were the circumstances that led to the
9 first meeting?

10 A We have a tenant, had then and still do, a tenant in our
11 building, Colt Ventures. The principal of that is a guy
12 Darren Blanton. He touted Martin's expertise a lot, said we
13 should consider investing with him. We do vet a number of
14 investing opportunities like this. At first I thought, well,
15 you know probably this is not something we'd be interested in,
16 but after repeated praises of Martin and suggestion that this
17 could be a good investment for Rosewood, I decided to take a
18 meeting. So we did have a meeting.

19 Q Mr. Marshall, where was the first meeting?

20 A It was in one of our conference rooms.

21 Q When you say our?

22 A Rosewood Corporation conference rooms.

23 Q Who else was at the meeting?

24 A Well Martin of course attended, and Darren Blanton sat
25 in, although he didn't say much. From our side there was John

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1 Dziminski, who was then a VP and Kim Mandel, also VP private
2 investments.

3 Q What did you talk about with the defendant at that
4 meeting?

5 A Well, he described his hedge fund and his area of
6 expertise being pharmaceutical companies.

7 Q What was the name of the hedge fund, do you recall?

8 A MSMB.

9 Q What did you tell you about the hedge fund?

10 A Basically it was focused on small pharmaceutical stocks.
11 And what was different about it and interesting was that, a
12 lot of hedge funds call themselves hedge funds but they are
13 truly not, mostly by long. By long, they invest in stocks
14 they hope will go up.

15 What he described was a fund that where he invested
16 long, meaning stocks he believed in; and also short, meaning
17 stocks that he thought were over-valued for one reason or
18 another and it was approximately even. Sometimes he would
19 make more money on the short positions than his long
20 positions, so that was a true hedge fund. That was
21 interesting.

22 And the second thing that was unique was he said
23 that he did not, he had been with previous hedge funds and did
24 not like the idea of investors' capital being tied up for a
25 long period of time. Often times it's a year before you have

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1 a chance to get your money out, they call it redeeming. He
2 said he wanted to provide liquidity to investors on a monthly
3 basis. Basically I thought this was a really good feature,
4 also showed confidence that he had in his hedge fund that he
5 would offer that.

6 Q Was there any discussion about the size of the fund?

7 A There was. I can't remember details. I got the
8 impression that it was fairly sizeable, but I can't really
9 quantify it.

10 Q Was there any discussion about the performance of the
11 fund?

12 A Yes, there was. What he described was quite impressive.

13 Q Was there any discussion about the rate of return or
14 anything else like that?

15 A I believe there were figures based on inception-to-date
16 numbers, and I don't remember the specifics. But I do
17 remember that they were better than you would normally expect
18 in a hedge fund like this. Also very consistent because they
19 calculated them on a monthly basis.

20 Q Did he mention anything about anyone else who was
21 involved in this fund?

22 A The only one I remember because I asked, I assumed MS was
23 Martin Shkreli, and MB that was Martin (sic) Biestek, I think
24 was the CFO, I may be mispronouncing Biestek, but that was the
25 MB.

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1 Q After this meeting in December 2010, did the Rosewood
2 Corporation invest in MSMB Capital?

3 A This meeting was in the summer of 2010. We did not,
4 Rosewood, did not invest.

5 Q Is there any reason?

6 A Let me just go back to the summer. We considered whether
7 this was appropriate at the end of the meeting and felt it
8 didn't have a long enough track record, but interesting and
9 probably ought to watch and it and see how it develops
10 overtime. Martin was young.

11 Q Through the end of 2010 or so, did you have further
12 communications with the defendant?

13 A Yes. At the end of the meeting, frankly, I thought
14 Rosewood would invest. I thought I would look at it and
15 consider investing myself, just as a precursor to Rosewood's
16 investment. There were conversations after the meetings.

17 One thing that was unique in the meeting and after
18 the meeting was that Martin shared his ideas about specific
19 companies and the reasons why he thought they were
20 under-valued; and therefore he was long, or over-valued and he
21 was short. He continued to do that after the meeting. And so
22 I followed that. I was frankly quite impressed because he was
23 right on all of his ideas.

24 Q Did you follow through on any of those ideas in late
25 2010?

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1 A Yes. Sometime in the fall I invested small amounts in
2 ideas that he suggested, mainly just to keep my focus. So I'd
3 watch him and see if they performed the way he thought they
4 should, or events unfolded the way he thought events would.
5 So, yes, I did follow him in that way.

6 Q Did there come a point in time in which you decided to
7 invest in MSMB Capital?

8 A Yes. Towards the end of 2010 I said I would consider an
9 investment and decided that if I did invest it would be
10 through my IRA.

11 Q Did you get any documents about the fund.

12 A Yes, I did.

13 Q What did you get?

14 A I got an offering memorandum that was pretty lengthy, and
15 then attached to it was a subscription agreement. And you
16 asked about the decision, I didn't decide to invest until I
17 read through those documents.

18 Q I'm showing you what is marked for identification as
19 Government's Exhibit 6. You have two binders there, in the
20 slightly bigger binder, it's tab 15.

21 A I have it.

22 Q Do you recognize this document?

23 A Yes.

24 Q What is it?

25 A It's the private offering memorandum that he sent me.

MARSHALL - DIRECT - MR. SRINIVASAN

1 MR. SRINIVASAN: We offer Government's Exhibit 6
2 into evidence.

3 MR. AGNIFILO: No objection, your Honor.

4 THE COURT: We'll receive Government's Exhibit 6.

5 (Government Exhibit 6, was received in evidence.)

6 Q Sticking with the cover page, what was the name of the
7 fund?

8 A MSMB Capital Management LP.

9 Q What is the date on this document?

10 A June 9, 2010.

11 Q If we can go to the 11th page, Bates number MS000137, do
12 you see the paragraph that starts, "Capital withdrawals"?

13 A Yes.

14 Q The first sentence reads, "Limited partners may withdraw
15 any or all of their capital accounts, subject to certain
16 reserves which may be established by the general partner to
17 cover contingent liabilities of the partnership, monthly at
18 the last calendar day of each month, commencing one full month
19 after the date of their initial investment in the partnership,
20 upon not less than 30 days prior written notice to the general
21 partner." Do you see that?

22 A Yes, I do.

23 Q What did this language mean to you?

24 A Well, this confirmed what Martin had said in the meeting,
25 that he allowed monthly withdrawals of your investment. And

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1 it was one of the things that I looked for to make sure it was
2 in here. It was a very positive factor in deciding to invest
3 in the fund.

4 Q Why was it a positive factor?

5 A Well, if you invest in a fund, typically you're tied up
6 for a year so you're sort of stuck for that period of time
7 regardless of performance. This was, if you didn't like the
8 way things were going you could withdraw your capital with 30
9 days' notice. And I thought, not only was it a positive
10 feature, but also showed that Martin had a great deal of
11 confidence in that he was going to offer that.

12 Q Let's go to the next page, Bates SM0000138.

13 A Yes.

14 Q Do you see the paragraph "auditors"?

15 A Yes.

16 Q "The general partner has selected Rothstein Kass &
17 Company as the partnership's independent certified public
18 accountants, which firm will issue an audit report on the
19 annual financial statements of the partnership." Do you see
20 that?

21 A Yes.

22 Q What did this language mean to you?

23 A Well, this was important, let me back up. They reported
24 monthly results. I was told that in the initial meeting, I
25 understood those were unaudited. I knew they had an auditor.

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1 I don't think I knew at the meeting who it was, I may have,
2 but. In any event, when I read this I saw they would have
3 annual audits. Rothstein Kass is a well-regarded, independent
4 CPA firm. And so that was obviously comfortable to know that
5 you would have an independent third-party reviewing the
6 records and certifying the financials on an annual basis.

7 Q Is the name Rothstein Kass familiar to you?

8 A Yes.

9 Q What was your impression of Rothstein Kass?

10 A That they were independent and competent.

11 Q If MSMB Capital did not have an auditor would that have
12 changed your decision to invest?

13 A I would say almost certainly yes.

14 Q How?

15 A Well, an enterprise like this should be audited on an
16 annual basis. If they were not, that would be a big red flag.
17 I certainly would wonder why. I would say almost certainly I
18 would not have invested if they had not had an independent
19 auditor.

20 Q Let's go to the 17th page of the exhibit, Bates
21 SM0000143, the heading labeled "risk factors"?

22 A Okay.

23 Q The italicized paragraph under that heading says, "All
24 securities investments risk the loss of capital. There can be
25 no assurance that the partnership will be profitable or that

MARSHALL - DIRECT - MR. SRINIVASAN

1 it will not incur losses. Prospective investors should, among
2 other things, consider the risks summarized below before
3 investing in the partnership. An investment in the
4 partnership is speculative, involves a high degree of risk
5 suitable only for person who are willing and able to assume
6 the risk of losing their entire investment." Do you see that?

7 A I do.

8 Q You mentioned you invested in MSMB Capital with your IRA
9 account?

10 A Yes.

11 Q What was your thought process with respect to evaluating
12 the risks of this investment?

13 A Well, first these risk factors are pretty standard. In
14 fact when I read this I was sort of comforted by the fact that
15 I thought it was a well-crafted legal document. The risk
16 factors in one form or another you see in almost every
17 investment like this.

18 The reason I thought it would be a good investment
19 for my IRA, was that it was a hedge fund. And typically what
20 that means, or at least it meant to me, is that it's market
21 neutral. Meaning, that if the market should go up then your
22 long position should be well and you might lose money on your
23 short position. If it goes down the opposite occurs, you lose
24 money on your longs and you make money on your short
25 positions. And therefore, in either market the fund had the

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1 potential to out-perform based on the expertise of the
2 manager.

3 Q In terms of your IRA, how did you at the time view the
4 risks of this investment?

5 A I viewed it certainly not risk-free, but I thought it was
6 a moderate risk investment that I could safely make.
7 Especially since if it started to where it wasn't working out,
8 I could withdraw the money on a 30-days notice.

9 Q In the months that followed that 2010 meeting at the
10 Rosewood Corporation, what, if anything, did the defendant
11 tell you about MSMB Capital's returns?

12 A If you're asking before I decided to invest, honestly I
13 can't recall specifics. But the tenor it was positive, doing
14 well on a monthly basis. And also I was watching the specific
15 ideas that he had talked about in the meeting as well as ideas
16 after the meeting, and they all performed like he thought they
17 would perform, either positively or negatively.

18 Q Was your impression of MSMB Capital's performance
19 important for your investing decision?

20 A Yes, sure.

21 Q Why is that?

22 A Well, you want to see a positive track record. And also
23 I didn't want to see real wild swings one way or the other.
24 And what I saw was pretty consistent and pretty positive, a
25 few months you'd see slightly down, but the consistency was

MARSHALL - DIRECT - MR. SRINIVASAN

1 important and it was positive.

2 Q If MSMB Capital was not profitable, would that have
3 affected your decision to invest?

4 A Yes.

5 Q How so?

6 A Well, you want to see a track record that's positive and
7 if the track record had been one of losses, it would have
8 caused me not to invest quite frankly.

9 Q A minute ago I think you talked about MSMB Capital's
10 investment strategy, was that important to your investment
11 decision too?

12 A Yes, it was. One thing that, let me just throw in that I
13 probably should have answered in response to one of your
14 earlier questions, was that I was a little concerned to make
15 sure that these investment returns were being generated
16 without the use of inside information. And both in the
17 meeting and after the meeting, I was listening to the
18 rationale and the factors that were being used to make the
19 securities selection, and satisfied myself that this was not
20 something that was being done with a inside information but
21 rather just intensive study of public documents and analysis.

22 Q Mr. Marshall, what sorts of companies did you believe
23 MSMB Capital invested in?

24 A Well, they were primarily small pharma companies, often
25 times with a product that either might or might not get

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1 approved by the FDA. So a lot of instances depended on FDA
2 decision, which could be positive or negative.

3 Q At this point, in about December 2014, had the name Elea
4 Capital came up with your discussion with the defendant?

5 A No.

6 Q If the defendant had run a prior hedge fund that had
7 performed poorly, would that have been important for you to
8 know when you make your investment?

9 MR. BRAFMAN: Objection, your Honor.

10 THE COURT: I'll overrule the objection.

11 A Yes, it would have.

12 Q How so?

13 A Well, you want to look at the entire track record of the
14 person who is making the security selection. So if he had a
15 bad run, negative result, in it a prior hedge fund, that would
16 have certainly been something I would have taken into account.

17 Q You also mentioned that you received a subscription
18 agreement; is that right?

19 A Yes.

20 Q I'm showing you what is marked for identification as
21 Government's Exhibit 25, which is tab 16 in your binder.

22 A Yes, I have it.

23 Q What is this document?

24 A It's first a questionnaire, which you have to fill out to
25 show that you're qualified investor for this sort of

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1 investment. Then it's a signature page, where you certify
2 that you answered truthfully and indicate an interest in
3 investing.

4 Q If you go to Bates number SM000077, which is the 14th
5 page of this document?

6 A Yes.

7 Q What is that?

8 A That's the signature page. It has various information
9 about myself and at the bottom my signature.

10 Q I think I meant the seventh page of the document.

11 THE COURT: Are you moving this in or just showing
12 it to him for recollection?

13 MR. SRINIVASAN: I am, your Honor.

14 Q What does it say on the top?

15 A Which page?

16 Q SM000077.

17 A It says, "Individual form of signature page to
18 subscription agreement."

19 THE COURT: We move Government's Exhibit 25 into
20 evidence.

21 MR. BRAFMAN: No objection.

22 THE COURT: We receive Government's Exhibit 245.

23 (Government Exhibit 25, was received in evidence.)

24 Q Mr. Marshall, when did you sign this subscription
25 agreement?

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1 A I believe I signed it in December, I think December 14.

2 There is no date signed, blank in here. I'm not sure why it's
3 different, but that's not my handwriting.

4 Q What is the date of remittance the bottom of this page?

5 A January 3rd, 2011.

6 Q What did that mean?

7 A That was the date that I was to remit the funds to
8 invest.

9 Q At the top there it says, first line, "IRA plus Southwest
10 LLC FDO Schuyler Marshall IRA"?

11 A Yes.

12 Q What did that mean?

13 A I had self-managed my IRA and I had recently approved
14 funds from another manager who wasn't performing well and put
15 some in the IRA fund in the brokerage firm. You have to have
16 a custodian to invest in a fund such as this. I decided to
17 put \$200,000 in an account with IRA plus Southwest, which is
18 such a custodian.

19 Q Is that the name of the IRA custodian?

20 A That's right.

21 Q How much did you invest in MSMB Capital?

22 A 200,000.

23 Q You can put that away.

24 After you invested in MSMB Capital, did you receive
25 periodic performance updates about your investment?

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1 A Yes.

2 Q Who sent them to you?

3 A Martin did, via e-mail.

4 Q Did you rely on these performance updates?

5 A Yes.

6 Q Did you believe them to be accurate?

7 A Well, they stated that they were unaudited; but yes, I
8 did believe they were accurate, subject to maybe slight
9 corrections if there was an audit.

10 Q What was your overall impression of the fund's
11 performance?

12 A Well, after investing I was very impressed. It
13 essentially continued as to what had been described prior,
14 that it was consistent, some months were a few percents, some
15 months were better than that. Only one month I think was in a
16 loss position. It was just steadily increasing in value.

17 Q Do you have a thinner binder there labeled 81 series?

18 A Yes.

19 Q There are eight tabs which are marked for identification
20 as Government's Exhibit 81-1 through 81-8. Do you see those?

21 A Yes.

22 Q Do you recognize them?

23 A Yes.

24 Q What are they?

25 A The e-mails that Martin sent me during 2011 describing

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1 the funds results.

2 Q Did you read them during your investment with MSMB
3 Capital?

4 A Yes.

5 MR. SRINIVASAN: Your Honor, we admit Government's
6 Exhibit 81-1 through 81-8.

7 MR. BRAFMAN: No objection.

8 THE COURT: We will admit 81-1 through 81-8.

9 (Government Exhibit 81-1 through 81-8, was received
10 in evidence.)

11 Q Let's start with 81-1, on what date was this e-mail sent
12 to you?

13 A It states March 2, I believe that's the date it was sent.

14 Q What month does the statement cover?

15 A It covers returns through February, and also has an
16 inception-to-date return figure.

17 Q According to this statement, what was the value of your
18 investment as of February 2011?

19 A 207,641.

20 Q Mr. Marshall, under account values it says you invested
21 \$199,195 there. I believe a minute ago you said you invested
22 200,000, is there anything that explains the difference?

23 A Well, what happened was this was a new custodian. I
24 asked them to remit the funds to MSMB early in the year.
25 They, for some unexplained reason, filled out \$199,195. I

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1 contacted them, asked people why they didn't send the whole
2 200,000. They didn't have a good reason for it. I asked them
3 to send the other \$805 ASAP, which they did.

4 Q Was that deposited into the MSMB Capital account?

5 A Yes, it was.

6 Q Mr. Marshall, did the defendant ever talk to you about a
7 company called Orex, or Orexigen?

8 A I don't believe so.

9 Q Did he ever say anything about losses that were sustained
10 by MSMB Capital in February 2011?

11 A No.

12 Q Let's go to Government's Exhibit 81-8. When was this
13 e-mail sent to you?

14 A It states September 10, 2012, I believe that's the date
15 it was sent.

16 Q What month does this statement cover?

17 A It covers the period through June, and also adds
18 year-to-date and inception-to-date figures.

19 Q What was the value of your investment according to this
20 statement?

21 A 282,237.

22 Q In addition to getting these account statements, did you
23 ever speak to the defendant about the performance of the fund?

24 A Yes. We did speak periodically about the fund and also
25 specific investments.

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1 Q Based on those conversations, what was your overall
2 impression of MSMB Capital's performance?

3 A Well, that it was doing extremely well. And it was doing
4 well primarily because Martin had very detailed knowledge of
5 the companies that he was investing in, either long or short.

6 Q Mr. Marshall, looking at period between January of 2011
7 and September of 2012, did you ever attempt to redeem your
8 investment in MSMB Capital?

9 A No.

10 Q Was there any reason why not?

11 A It was performing as I hoped it would.

12 Q During the course of your investment, did the defendant
13 ever tell you in writing or verbally that redemptions were no
14 longer allowed to MSMB Capital?

15 A No.

16 Q During your time as an MSMB Capital investor, did you
17 become aware of a company called Retrophin?

18 A Yes. I received some documents about, that they were
19 trying to invest, have a second business I would say, that was
20 investment in a private company called Retrophin.

21 Q Who is they?

22 A Well, Martin and I assume his staff at MSMB.

23 Q When you say a second business, could you elaborate on
24 that?

25 A Well, the hedge fund as it was described to me was going

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1 to be investing in publicly-traded stocks, and either long or
2 short. And they themselves had a lot of information about
3 them that Martin could analyze and decide whether to invest
4 either way. This was a start-up of a private company. And if
5 I remember correctly, I think he was, he had a candidate for
6 the initial drug that he was trying to get a license from a
7 university, I think Minnesota.

8 Q When you say second business, did you believe there was a
9 relationship between MSMB Capital and Retrophin or?

10 A I thought, I believe I was told that it was going to be a
11 separate business that was not connected to the hedge fund,
12 but an attempt to start a business from scratch.

13 Q So to what extent were you told that MSMB Capital had
14 paid money to invest in Retrophin?

15 A I don't believe I was told that.

16 Q At some point did you learn that MSMB Capital was
17 shutting down?

18 A Yes. Later that year there was an e-mail I think to all
19 investors to that effect.

20 Q I'm showing you what is marked for identification
21 Government's Exhibit 109-9.

22 A I have that.

23 Q If you look at the top of that e-mail, do you see your
24 e-mail address on this document?

25 A Yes.

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1 Q What is the date of the document?

2 A It says it was sent Monday September 10, 2012.

3 MR. SRINIVASAN: Your Honor, we move Government's
4 Exhibit 109-9 into evidence.

5 MR. BRAFMAN: No objection.

6 THE COURT: We will receive 109-9.

7 (Government Exhibit 109-9, was received in
8 evidence.)

9 Q Mr. Marshall, do you recall getting this e-mail in
10 September 2012?

11 A I recall the e-mail. I'm not sure if I got it on the
12 date. I'm not sure why, but it seems to me it might have been
13 a little later than this that I got it, but I do remember
14 getting it.

15 Q If we could focus on the first paragraph, "I decided to
16 wind down our hedge fund partnerships with the goal of
17 liquidating of the funds by November or December 1st, 2012."
18 Do you see that?

19 A Yes.

20 Q What was your understanding what of that meant?

21 A Well, that he had decided to close the fund down,
22 essentially. And there was -- the document speaks to more
23 detail on the second page.

24 Q Let me go to the second page?

25 A It was my understanding he was going to shut the hedge

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1 fund down.

2 Q Let's go to the second page. The last paragraph?

3 A Yes.

4 Q "A few operational notes. Investors will have limited
5 partnership interests redeemed by the fund by cash.

6 Alternatively investors may ask for a redemption of Retrophin
7 shares or a combination of Retrophin shares and cash." Do you
8 see that?

9 A I do.

10 Q What did that language mean to you?

11 A Well, that as the fund shut down they would be
12 liquidating all the investments and I could receive back the
13 cash that I had invested, plus the gains that had occurred in
14 the fund. And I had the option, if I choose it, to take some
15 Retrophin shares in addition to cash.

16 Q Mr. Marshall, at some point did you become familiar with
17 a reverse merger as it related to Retrophin?

18 A I believe, I believe there was a later e-mail that
19 indicated that they had done such a reverse merger by
20 acquiring a shell company that was probably called Gateway.

21 Q Let me go to Government's Exhibit 104-3, tab three in
22 your binder.

23 A I see that.

24 Q Marked for identification. Do you recognize this?

25 A Yes.

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1 Q What is it?

2 A It's a press release at the bottom with a cover letter
3 from Martin Shkreli dated December 18, 2012, with my response
4 at the top the next day, December 19.

5 THE COURT: Speak into the microphone I'm having a
6 little trouble hearing you.

7 THE WITNESS: Sorry.

8 MR. SRINIVASAN: We move Defendant's Exhibit 104-3
9 into evidence.

10 MR. BRAFMAN: No objection.

11 THE COURT: We receive 104-3 in evidence.

12 (Government Exhibit 104-3, was received in
13 evidence.)

14 Q Mr. Marshall, focusing on the e-mail that's in the
15 middle, from the defendant dated December 18, 2012, do you see
16 that?

17 A Yes.

18 Q He wrote, "Please see the attached press release. As
19 many of you know I've started a biotechnology company
20 Retrophin, RTRX. This is my primary focus going forward. I
21 hope you will support me in my new role. I'll use my 12 years
22 professional investing to get Retrophin to great shareholder
23 value." Do you see that?

24 A I do.

25 Q If you go up to the e-mail on the top, what did you write

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1 back on December 19?

2 A You want me to read what I wrote?

3 Q Yes.

4 A "Congratulations, Martin. Sounds promising. Does RTRX
5 have enough cash to get through phase two and/or start phase
6 three? If not, what are the plans to secure the needed funds?
7 Approximately what percentage of the fund of value is
8 represented by RTRX? And when do you plan to close it down
9 and distribute? And am I correct in assuming that the
10 distribution will consist of cash and RTRX shares. Schuyler."

11 Q Mr. Marshall, at this point, did you have any
12 understanding of how much of the fund value was represented by
13 Retrophin?

14 A I did not. But based on the tenor the previous memo and
15 this one, I assumed it was a small portion, maybe several
16 percent something like that, because they were looking to get
17 more funds to grow Retrophin.

18 Q What was your reaction to receiving this information
19 about Retrophin?

20 A Well, I was a little surprised that MSMB had invested in
21 Retrophin, because I thought it was going to be all public
22 companies. My reaction was that I'd like to get the cash back
23 into my IRA, and then I would follow this and possibly
24 consider a separate investment in Retrophin in the future if
25 it worked out.

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1 Q By this point, what did you believe was the value of your
2 MSMB Capital investment?

3 A I think the last thing that I had seen, it showed a value
4 about 282,000.

5 Q After you received this e-mail did you try to redeem your
6 investment in MSMB Capital?

7 A Yes, I did.

8 Q In about what time frame was that?

9 A Well, it was pretty much the whole spring of 2013.

10 Q Who at MSMB Capital did you communicate with?

11 A Martin.

12 Q What did you communicate with him about what you wanted
13 in the redemption?

14 A I wanted to get the cash back in my IRA. And I was just
15 trying to basically exercise the liquidity right. And also
16 plus they had represented back in the fall that, or he had
17 represented, that they would be distributing cash if you
18 wanted it soon. And already it was past the date that that
19 cash was supposed to be out. So I was interested in getting
20 that done and then possibly making a separate investment in
21 Retrophin.

22 Q Now focusing on the late winter, early spring in 2013,
23 was the defendant responsive to your communications?

24 A Well, I'd say intermittingly. He was very busy, he said,
25 getting Retrophin started, and having various meetings with

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1 different people and so forth. And I was trying to get him
2 focused on just getting this done, getting the cash back.

3 Q Sticking with the Spring of 2013, did you receive
4 anything from the defendant in connection with your
5 redemption?

6 A Well, somewhere in mid-spring I received a share
7 certificate of Retrophin. I don't believe it had a cover
8 letter. I don't remember it having one. I hasn't asked for
9 it. I was surprised that it showed up in the mail.

10 Q How did it arrive to you?

11 A By mail.

12 Q How many shares did you get?

13 A 37,000 and some number, 37-plus, 37000-plus shares.

14 Q I'm going to show you what is marked Government's Exhibit
15 104-6 for identification. Look at this document and see if it
16 refreshes your recollection on the number of shares you got?

17 A 37,809.

18 Q You can put that document away for now. What was your
19 reaction to receiving this stock certificate?

20 A Well, I was surprised because we hadn't discussed either
21 receiving any stock or certainly not an amount of stock. It
22 just showed up. And I looked at it, it was restricted stock,
23 meaning it couldn't be traded. And so I was -- we had
24 discussion about that. I said I really wanted cash, not
25 stock. And I didn't want stock that was also restricted

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1 because I couldn't convert it to cash.

2 Q So did you continue to have communications with the
3 defendant about your redemption after this point?

4 A Yes.

5 Q I'm showing you what is marked for identification as
6 Government's Exhibit 104-4, which is tab four in your binder
7 marked for identification, do you recognize this?

8 A Yes.

9 Q What is it?

10 A It's a series of e-mails back and forth between Martin
11 and me spanning March and April of 2012, actually starting
12 February 2012.

13 Q Take a look at the document, is it 2012?

14 A I'm sorry 2013, yes, 2013.

15 MR. SRINIVASAN: We move Government's Exhibit 104-4
16 into evidence.

17 MR. AGNIFILO: No objection.

18 THE COURT: We will receive 104-4.

19 (Government Exhibit 104-4, was received in
20 evidence.)

21 Q If we go to the second page of this document, look at the
22 e-mail on the bottom.

23 A Yes.

24 Q This is from you to the defendant dated February 27,
25 2013?

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1 A Yes.

2 Q What did you write to the defendant?

3 A "Martin, I received the RTRX share certificate with the
4 restricted legend on the back. When does the company plan to
5 register these shares or otherwise make them tradeable? Also,
6 you indicated that the fund would be liquidating and
7 distributing cash for the remaining balance, when will that
8 occur? And what is my approximate remaining balance. Thank
9 you, Schuyler Marshall."

10 Q Why did you write this email?

11 A Well, again, I was, what I really wanted was cash. But I
12 was trying to find out what was going on and exert pressure
13 but in a more or less friendly way.

14 Q Why friendly?

15 A Well, I just thought that it would be the most effective
16 way to get the cash back in my IRA, by working together,
17 cooperatively Martin to get that done.

18 Q Going to the next e-mail up, this is written by the
19 defendant to you on March 4, 2013. He writes, "Hi, Schuyler.
20 I hope you're well. There is no specific registration plan
21 other than we intend to register the shares as soon as
22 possible. You may be familiar with Rule 144, which allows for
23 the sale of any unregistered security if held for over one
24 year. I hope we can get them registered a lot sooner than
25 that, but hopefully that gives you some error bounds. The

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1 fund focused primarily on growing Retrophin and as such this
2 is the only remaining asset. I would be willing to buy back
3 your shares for the most recent quoted value of your fund, if
4 that is of use to you, or give you more shares from my
5 personal shares to true-up your account value. It is
6 unfortunate the stock market doesn't like Retrophin as much as
7 I do. However, over time I'm confident the shares will be
8 worth over a ton. I wouldn't be quick to sell them if I were
9 you. I'm happy to come to Dallas and give you an update on
10 what I'm doing." Do you see that?

11 A Yes.

12 Q When the defendant wrote that Retrophin is the only
13 remaining fund, did you know this before you received this
14 e-mail?

15 A No.

16 Q What was your reaction to that news?

17 A Well, that was pretty shocking. Because up until that
18 point I had seen that it had positions in a number of
19 publicly-traded stocks that it had liquidated pending
20 distributing cash to the investors. And when he said it's the
21 only remaining asset, I was quite surprised because I thought
22 it might be a very small investment of the fund and the rest
23 would be cash that resulted from the liquidation of the public
24 securities.

25 (Continued following page.)

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1 DIRECT EXAMINATION (CONTINUED)

2 BY MR. SRINIVASAN:

3 Q Let's go to the next email up.

4 What did you write in response on March 4th, 2015?

5 A Martin, thanks for responding. What was my most recent
6 quoted accounted value. I believe the last I saw in the early
7 fall was about 265,000. I do need to consider the option as
8 these are IRA funds, as you know, and thus were intended for
9 conservative investment. If I do take this option, I may buy
10 some RTRX in a smaller quantity, and in an account that fit an
11 expected investment in the future and look forward to
12 following it closely. Regards, Schuyler.

13 Q Now, going to the next email up.

14 He writes -- the defendant wrote to you on March 7,
15 2013: Sorry for the delay, Schuyler, things are a little nuts
16 here. The other thing I'll mention is the value of Retrophin
17 did fall from when MSMB invested in it. We will make sure you
18 get \$265,000 of value that you deserve, despite that. I will
19 be back to you with an update soon.

20 Did you have any reaction to this?

21 A Well I was -- I was pleased that he agreed to cash me
22 out. And so I was hoping to making progress and I was
23 expecting to go in and wrap it up on that basis.

24 I think at some point I realized I had make a
25 mistake. The last figure I had seen was actually 282, not

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1 265.

2 Q And going to the previous page, SM00054, at the bottom
3 there.

4 What did you write back on March 7th?

5 A Yeah, it was the same day I responded to him.

6 Thanks for the response, Martin, as my investment
7 was with IRA funds, I appreciate your offer to buy back the
8 shares in exchange for the 265K. Please let me know the best
9 way logistically to do this. A simple one would be just to
10 exchange the share certificate for a check the next time you
11 are here, or that I am in NYC. Would this work from your
12 standpoint. I will be cheering RTRX on and may buy a small
13 number of shares in an account with a respective to investment
14 will be suitable and actively follow the company. Regards,
15 Schuyler.

16 Q Mr. Marshall, what were your feelings about the defendant
17 and your investment at this point?

18 MR. BRAFMAN: Objection.

19 THE COURT: Can you rephrase the question, please.

20 Q Mr. Marshall, what were your -- what were your feelings
21 about your investment in MSMB Capital?

22 MR. BRAFMAN: Objection.

23 THE COURT: Overruled.

24 A Well, I was concerned about my investment having learned
25 that instead of liquidating public securities and holding the

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1 cash, that he said that the only investment in MSMB Capital
2 was Retrophin.

3 Q And, Mr. Marshall, going up to -- sticking on SM00054,
4 the next email up. This is March 20th, 2013.

5 What did you write?

6 A Martin, it's been two weeks since the last of our
7 March 4-7 email exchange. I would like to exchange the share
8 certificate for the check you offered in the emails of March 4
9 and 7, in order to put the funds into investment suitable for
10 an IRA. Please let me know when and how we can complete this
11 exchange. Best regards, Schuyler.

12 Q And if we go another email up.

13 The defendant wrote on March 20th: I will
14 definitely help you -- I will definitely help with this, just
15 on a California roadshow, back Monday. Everything going great
16 and I'm sure I give this attention and priority it deserves.

17 And what did you write on April 1st?

18 A Martin, glad things are great with RTRX. Do you just
19 want to second a check for the exchange of the shares? We
20 could have Darren as the middle, if you want, or I will be in
21 NYC later this month if we are to meet there to complete the
22 transaction. The check should be to me as custodian or my
23 IRA. Thanks, Schuyler.

24 Q If we go up one more email.

25 The defendant wrote on April the 8th: Hey,

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1 Schuyler, sorry this is taking so long. I'm going to send you
2 an agreement that will finalize the transaction.

3 Do you see it?

4 A Yes.

5 Q Did he give you any explanation for why, quote, this was
6 taking so long at this point?

7 A There were some telephone conversations and, in general,
8 Martin was very busy doing going to meetings and, you know,
9 various things and didn't seem to be as focused as I wanted to
10 be on just completing this transaction, which I thought would
11 be pretty simple where we would simply meet and exchange the
12 share certificates for a check.

13 Q Were the communications with the defendant about
14 redeeming continue after this point?

15 A Yes, they did.

16 Q At some point was there a discussion about the outline of
17 the deal?

18 A I think at some point I was frankly encouraged and
19 thought it was positive that Martin told me that my account
20 had actually gone up 300,000 after that last email that said
21 it was 283, and that he wanted to do what was right in terms
22 of redeeming me out of the fund.

23 Q And about when was that?

24 A That, I think, occurred in May, and then there really
25 wasn't a negotiation. There was an email that he sent which

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1 proposed what our final transaction would be.

2 Q I'm showing you what's marked for identification as
3 Government's Exhibit 104-6.

4 Do you recognize this document?

5 A Yes, that's the email I just referred to.

6 MR. SRINIVASAN: Your Honor, we move Government's
7 Exhibit 104-6 into evidence.

8 MR. BRAFMAN: No objection.

9 THE COURT: Received, 104-6.

10 (Government Exhibit 104-6, was received in
11 evidence.)

12 Q And, Mr. Marshall, according to this email, what were
13 the -- what was the proposal, as you put it?

14 A Well, it simply says 300,000 cash, 300 stock. It's
15 actually an email sent to his attorney, Evan Greebel, with a
16 copy to me. And then it says: He has some amount of stock
17 now, dash, 37,809 or so, so we would issue 6300 shares of
18 stock and wire 300,000 in cash. And then it has my
19 handwriting on it.

20 Q What happened after this email?

21 A Well, I immediately said fine. I accept. Let's get it
22 done.

23 Q Did you receive any proposed documents to the deal?

24 A I think the next thing that happened was there was some
25 back and forth in June where I was trying to just get it done,

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1 and at some point received from Evan Greebel a draft
2 settlement agreement.

3 MR. SRINIVASAN: Your Honor, I'm happy to keep on
4 going, or we can take the lunch break.

5 THE COURT: How are the jurors? Would you like to
6 take a lunch break now, ladies and gentlemen, or would you
7 like to keep going?

8 THE JURORS: Keep going.

9 THE COURT: Keep going? All right.

10 BY MR. SRINIVASAN:

11 Q I'm showing you what's been marked for identification,
12 sir, as Government's Exhibit 104-8, which is Tab 8 in the
13 binder.

14 A Yes.

15 Q What is this document?

16 A It's an email from Evan Greebel to me dated June 18, 2013
17 attaching a draft settlement and release agreement.

18 MR. SRINIVASAN: Your Honor, we move Government's
19 Exhibit 104-8 into evidence.

20 MR. BRAFMAN: No objection.

21 THE COURT: Received 104-8.

22 (Government Exhibit 104-8, was received in
23 evidence.)

24 Q And, Mr. Marshall, who is cc'd on the email?

25 A Martin Shkreli.

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1 Q And it's at what email address?

2 A Martin@retrophin.com.

3 Q And it says: Schuyler, as we discussed, attached is a
4 draft settlement agreement. I'm simultaneously sending it to
5 my client. It is subject to their review and comments. If
6 you have any questions or comments, please call me. Evan
7 Greebel.

8 In the line that says there's an attachment, is
9 there an attachment to this email?

10 A There is.

11 Q Go to the next page. It's Bates number R019906.

12 What is this document?

13 A It's the draft settlement and release agreement.

14 Q And if we can focus on the first paragraph.

15 Who are the parties in this draft?

16 A You want me to read into the record?

17 It was basically MSMB Capital and related entities,
18 management entities, and Martin Shkreli. Also named
19 Retrophin.

20 Q Were you one of the parties?

21 A Yes, of course.

22 Q Martin Shkreli? Was Martin Shkreli one the parties?

23 A Yes, he was.

24 Q And MSMB Capital and MSMB Capital, LLC?

25 A Yes.

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1 Q What are the other entities that are listed here? If you
2 can you just read those out.

3 A Well, it lists in addition to Martin Shkreli, MSMB
4 Capital Management, LP; MSMB Capital Management, LLC; MSMB
5 Healthcare, LP; MSMB Healthcare Investors, LLC; MSMB
6 Healthcare Management, LLC; MSMB Capital. I think I repeated
7 that. These were collectively called the MSMB entities and
8 Retrophin.

9 Q Did you have any understanding of why MSMB Healthcare or
10 Retrophin were listed as parties to this agreement?

11 A No, I did not.

12 Q Going to the bottom of the page. The paragraph that
13 starts "payment terms."

14 Do you see that?

15 A Yes.

16 Q And it says: The MSMB entities, or Retrophin,
17 individually or collectively the payor, agree to deliver or
18 cause to be delivered to the releasor, the total amount of,
19 \$300,000, the attached payment, and Shkreli agrees to deliver,
20 or cause to be delivered to the releasor the total amount of
21 6,300 shares of common stock.

22 Do you see that?

23 A Yes.

24 Q Again, as between you and the defendant, which side
25 proposed this language?

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1 A They did.

2 Q Mr. Marshall, was this agreement that we see here signed?

3 A This one was not signed. I indicated it was acceptable.

4 There was a typo in it, but at this point I just wanted to get
5 this transaction concluded and so I said fine, let's proceed.

6 Q What happened after that?

7 A Further delay.

8 Q I'm showing you what's marked for identification as
9 Government's Exhibit 104-7.

10 Do you recognize this? That's Tab 7 in the binder,
11 sir.

12 A Yes.

13 Q What is this?

14 A It's a series of emails, one was that I wrote on
15 June 24th to Evan Greebel. And he responded the same day and
16 I responded back to him the same day.

17 MR. SRINIVASAN: Your Honor, we move Government's
18 Exhibit 104-7 into evidence.

19 MR. BRAFMAN: No objection.

20 THE COURT: Received 104-7.

21 (Government Exhibit 104-7, was received in
22 evidence.)

23 (Pause.)

24 BY MR. SRINIVASAN:

25 Q Mr. Marshall, so we're on 104-7. And if we can focus on

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1 the bottom of that page.

2 A Yes.

3 Q There's an email that appears to go on to the next page.

4 You wrote this on June 24th, 2013 to Evan Greebel?

5 A Yes. Yes, I did.

6 Q And what did you write?

7 A Evan, I am disappointed no one is responding to calls or
8 emails concerning getting the release executed and our
9 agreement performed. I am still willing to proceed as we
10 agreed. However, in order to ensure preservation of documents
11 in case they are needed, this confirms my request to be
12 provided the following, colon: All documents concerning or
13 relating to my account value at all times; all documents
14 concerning or relating to the funds and Martin's investment in
15 Desert Gateway/RTRX; all document relating -- concerning or
16 relating to Martin's acquisition of the shares of RTRX,
17 including the consideration for such shares, and relate --
18 relation -- that should have been relating -- or referring to
19 the shares issued to other fund shareholders; all documents
20 relating to Martin's decision to convert a long/short fund
21 into a single investment in one company; including the
22 efforts, if any, to obtain approval for such conversion from
23 any limited partners in the fund; all documents relating to or
24 concerning the disposition of any fund investment. Evan, my
25 position is that no privilege would apply to communications

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1 with attorneys representing MSMB and RTRX, as those attorneys
2 owe duty to the entities and their own IRS, including limited
3 partners, and minority shareholders. This is not a complete
4 request and hopefully it will become moot through the
5 performance of the agreement outlined in the release you sent.
6 Regards, Schuyler Marshall.

7 Q Mr. Marshall, why are you writing to Evan Greebel?

8 A Well, he's the one I was dealing with. He was the
9 attorney, outside attorney for Martin, and Retrophin, and I
10 guess all the entities, and --

11 Q Why did you write this email in the way that you did?

12 A Well, we finally reached an agreement at the end of May.
13 I accepted this the same day. They sent out a draft
14 settlement agreement which I -- he sent, which I said that's
15 fine, let's proceed, I'll sign it.

16 And then a period of time elapsed where nobody was
17 responding, and so I really at this point I was concerned and
18 just wanted to increase the pressure, and the language I wrote
19 was essentially to make the point that if litigation should be
20 necessary, I wanted him to preserve any and all documents that
21 could be related to the litigation. So, in effect, I was
22 trying to ramp up the pressure a little bit.

23 Q Did you have any conversations with Evan Greebel during
24 this time period?

25 A There were some communications. There wasn't anything

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1 too substantive, it was along the lines that he had sometimes
2 there was a delay communicating with Martin because he was so
3 busy.

4 Q Did you elaborate -- in your conversations with Evan
5 Greebel, did you elaborate and on this email?

6 A I don't think so.

7 Q What happened in June or July, after you sent this email?
8 Did you have further communications with the defendant?

9 A I'm not honestly sure whether the communications were
10 with Martin or with Evan Greebel. But, yes, there were
11 further communications. I was definitely trying to, you know,
12 get the agreement performed and get this over with.

13 Q Were you following Retrophin at the time?

14 A Yes, I was.

15 Q What, if anything, do you recall about that?

16 A Well, I do recall reading that they had, I think it was
17 in August, included a, what's called a "pipe transaction,"
18 which is a public debt financing for a private company in the
19 amount of \$25 million. And so I remember reading that and
20 writing and, in effect, what I was thinking is if they're
21 short the cash, they now have \$25 million in fresh cash, let's
22 get this done.

23 Q I'm showing you what's been marked for identification as
24 Government's Exhibit 104-12. Tab 12 in your binder.

25 A Yes.

MARSHALL - DIRECT - SRINIVASAN

1 Q What is this?

2 A Martin sent me an email.

3 Q When did he send it?

4 A August 28th, 2013.

5 MR. SRINIVASAN: Your Honor, we move Government's
6 Exhibit 104-12 into evidence.

7 MR. BRAFMAN: No objection.

8 THE COURT: Received 104-12.

9 (Government Exhibit 104-12, was received in
10 evidence.)

11 Q Mr. Marshall, let's start with the bottom email. This is
12 the defendant writing to you on August 28th, 2013, cc'g Evan
13 Greebel, the subject is revision.

14 He wrote: After exhaustive talks with our
15 attorneys, there will be a revision to the agreement. You
16 will get this at about 7 p.m. Eastern Standard Time. The
17 revision is simple, it merely removes MSMB as an obligor and
18 references Retrophin alone. This is crucial for a number of
19 reasons that are beyond my ability to explain. Evan is cc'd
20 if you have any questions. They are sending the wire this
21 week, the money should be on its way. I am glad to get this
22 behind us.

23 Did you have any understanding of what he meant by
24 "exhaustive talks"?

25 A No, just -- it was my understanding that for some reason

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1 they wanted to revise the agreement in a manner that didn't
2 change the deal that we had, but did you sort of split it in
3 the two agreements.

4 Q So let's go to the next email up.

5 This is written by Evan Greebel to you and the
6 defendant on August 29th. He writes: Hi, Schuyler, I
7 apologize for the delay, but I had some connectivity issues.
8 As discussed, attached are two settlement/release agreements;
9 one between you and Retrophin contemplating the payment of the
10 money, and the second between you and Martin and MSMB relating
11 to the delivery of the shares. In the interest of time, I am
12 simultaneously sending it to Martin. The difference between
13 these two agreements, and the prior version is that we divided
14 the prior version to separate Retrophin's payment obligation
15 and release from the delivery obligation and release of Martin
16 and MSMB. Otherwise, the agreements are the same. Please
17 advise if you have any questions. Best regards, Evan.

18 Mr. Marshall, did you have any understanding of the
19 reason for the change?

20 A I did not.

21 Q Does this document here indicate that there's attachments
22 to Evan's Greebel email?

23 A Yes.

24 I guess my understanding was that maybe they were
25 concerned on their side that it would be clear that there was

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1 consideration flowing from all the entities that I was going
2 to release so that the releases would be valid. It think
3 that's what I surmised, but I didn't really know.

4 Q Okay. And if you go to the third page of this exhibit,
5 which is R02197.

6 A Yes.

7 Q Is this the attachment?

8 A Yes, it is.

9 Q Did you eventually sign these agreements?

10 A Yes.

11 Q I'm showing you what's been marked for identification as
12 Government's Exhibits 57A and 57B, which are Tabs 17A and B in
13 your binder.

14 Do you recognize these documents?

15 A Yes.

16 Q What are they?

17 A These are the documents that I signed that effectuated
18 the settlement.

19 MR. SRINIVASAN: Your Honor, we move to admit
20 Government's Exhibit 57A and B.

21 MR. BRAFMAN: No objection.

22 THE COURT: Received 57A and 57B.

23 (Government Exhibit 57A, was received in evidence.)

24 Government Exhibit 57B, was received in evidence.)

25 MR. SRINIVASAN: Ms. Zellan, can we put 57A and B

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1 side by side, please? And can you zoom in on the first
2 paragraph of each document?

3 Q Mr. Marshall, 57A is on the left of the screen, 57B is on
4 the right-hand side.

5 Are you able to see them on your screen, sir?

6 A Yes.

7 Q Who are the parties to the agreement on Government's
8 Exhibit 57A on the left-hand side?

9 A Well, the agreement is between me, as releasor, and
10 Martin Shkreli; MSMB Capital, LP; MSMB Capital, LLC, MSMB
11 Healthcare; Investors, LP; MSMB Healthcare Investors, LLC;
12 MSMB Healthcare Management, LLC; MSMB Capital, LLC -- well, no
13 sorry. Those are collectively called MSMB entities.

14 Q Okay. And looking on the right-hand side of your screen,
15 that's Government's Exhibit 57B. Who are the parties to
16 Government's Exhibit 57B?

17 A I am the releasor and Retrophin is the other party.

18 Q Did you have any understanding of why Retrophin was the
19 only party in Government's Exhibit 57B?

20 A No. Other than what I've already said, that I assumed
21 that they wanted to sort of clarify that consideration from
22 all the parties that were going to get a release.

23 MR. SRINIVASAN: Now, let's zoom in on the bottom of
24 the first page of both documents.

25 Q Now, again, 57 -- Government's Exhibit 57A is on the

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1 left. The first sentence says: Shkreli agrees to deliver or
2 cause to be delivered to the releasor the total amount of
3 6,300 shares of common stock.

4 Do you see that?

5 A Yes.

6 Q And on the right-hand side it says: Retrophin agrees to
7 deliver or cause to be delivered to the releasor the total
8 amount of \$300,000 for the attached payment.

9 Do you see that?

10 A Yes, I do.

11 Q If we can go to the last pages of both documents.

12 So on the left, Mr. Marshall, is Government's
13 Exhibit 57A.

14 That's the agreement where Martin Shkreli was to
15 give you 6300 shares; is that right?

16 MR. BRAFMAN: Objection. It says Retrophin.

17 THE COURT: Overruled.

18 MR. SRINIVASAN: It's Government's Exhibit 57A.

19 MR. BRAFMAN: Withdrawn.

20 MR. SRINIVASAN: Okay.

21 A Yes, that's correct.

22 Q Okay. Whose signature is on this page?

23 A Mine.

24 Q Do you see the defendant's signature for himself here?

25 A I do not.

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1 Q If we go to Government's Exhibit 57B, which is on the
2 right-hand side of your screen?

3 A Yes.

4 Q This is the agreement where Retrophin agreed to pay
5 \$300,000?

6 A Yes.

7 Q Whose signature is on the left-hand side?

8 A That's my signature.

9 Q Do you know whose signatures is on the right-hand side?

10 A I believe it's Martin Shkreli's.

11 Q Mr. Marshall, did you speak to anyone at Retrophin, other
12 than the defendant, about these settlement agreements?

13 A No. Other than their outside counsel, Evan Greebel.

14 Q Did you have any understanding of whether the Retrophin
15 board of directors approved the settlement agreements?

16 A I suppose that issue never crossed my mind. I would have
17 assumed, yes, but...

18 Q Do you know one way or the other?

19 A No, I don't.

20 Q Mr. Marshall, what happened after you signed these
21 agreements?

22 A I believe the same day the 300,000 shares was -- was
23 wired.

24 MR. BRAFMAN: Stock.

25 THE COURT: You mean cash?

MARSHALL - DIRECT - SRINIVASAN

1 A I'm sorry, correct, \$300,000 was wired to my account
2 and...

3 Q What, if anything, happened to the 6300 shares?

4 A It was never -- that share certificate was never sent.

5 Q Mr. Marshall, you mentioned before that you got about
6 37,809 shares; is that right?

7 A That's right.

8 Q What did you do with the shares that you received?

9 A Well, I had asked that the legend be removed, the
10 restrictions, and the restrictions were not removed, so I
11 simply held on to those shares. And it is proved that after a
12 year you can go through the process of getting the
13 restrictions removed. There are applications that you have to
14 make and so forth that I had my broker who had the shares, was
15 holding the shares, went through that process and got the
16 restrictions removed, and I sold those shares as soon as I was
17 way able to.

18 Q Did you make a profit? As compared to your initial
19 investment?

20 A Well, I had received 300,000 in cash, and I did sell the
21 shares for positive, a positive return, yes.

22 Q And approximately how much, overall, did you sell the
23 shares for?

24 A You know, I don't really have that figure. Initially I
25 remembered the shares bouncing around between 1 and 3. And I

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1 really just wanted to liquidate the shares whenever I could,
2 so I -- it was something in the range, let's just say, of
3 maybe a low of 40,000 and a high of 100,000 would be my best
4 estimate.

5 THE COURT: When you say "between 1 and 3," what are
6 you talking about?

7 THE WITNESS: The Retrophin shares I recall, Your
8 Honor, were trading between 1 dollar a share and \$3 a share in
9 small amounts. I remember watching it and possibly -- it was
10 very volitive, it could have gotten higher than that, but
11 that's the range I remember. But as soon as I could liquidate
12 the shares, I did.

13 Q Mr. Marshall, from the point that you -- that we're
14 talking about the winding down of MSMB Capital to the time you
15 signed this agreement, about how much time elapsed?

16 A Well, this occurred at the end of August of '13, and I
17 would say, what, nine or ten months.

18 MR. SRINIVASAN: One moment, Your Honor.

19 THE COURT: Would now be a good time for a lunch
20 break?

21 MR. SRINIVASAN: Yes, Your Honor.

22 THE COURT: The jurors are ready.

23 MR. SRINIVASAN: No further questions.

24 THE COURT: Okay. Let's give the jurors a lunch
25 break.

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1 If you would kindly return to the jury room by 2.
2 Please don't talk about the case, and avoid any media on this
3 case, or Mr. Shkreli. Thank you.

4 (Jury exits the courtroom.)

5 (Whereupon, a recess was taken at 1:01 p.m.)

6 (Continued on next page.)

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PROCEEDINGS

1 MR. AGNIFILO: Your Honor, I have a three-minute
2 objection to make. I can do it now or at the end of the day.

3 THE COURT: Let's do it now. If it's something you
4 would like me to think about I'd rather correct it now rather
5 than wait until the end of the day when the witness is
6 finished testifying.

7 MR. AGNIFILO: Yes. We've objected, I think with a
8 number of the witnesses, to questions along the lines of,
9 'would a certain fact or a certain condition have been
10 important to you,' or, 'would this have been an important
11 factor whether or not to invest.'.

12 We've objected to those questions. There is also
13 sort of a subtle refraining of the question, which is, if you
14 would have known a certain fact would you have invested.
15 We've objected to those with many of the witnesses as well.
16 The reason we're objecting is the question is framed such that
17 the omission is apparently a material term that the witness
18 would have wanted to know.

19 While that's all well and good, under the Supreme
20 Court decision in Matrixx Initiatives Versus Siracusano, 563
21 United States, page 27, 2011, the standard is an objective
22 standard. It's a reasonable investor. It's not any one
23 particular investor. It's not a subjective standard.

24 So it's really irrelevant at the end of the day in
25 terms of the misrepresentation by omission that any particular

PROCEEDINGS

1 investor thinking a particular condition or fact is
2 dispositive of whether he or she would invest.

3 I also note the Supreme Court Basic Versus Levinson,
4 485 United States 224 from 1988, says very clearly that
5 silence absent a duty to disclose is not misleading under
6 10B5, the Securities Laws. The problem with the questions as
7 being framed is there is no establishment of a duty on the
8 part of Mr. Shkreli or MSMB to say whether or not he was
9 involved in Elea Capital or other things that the prosecution
10 has repeatedly used to frame a question.

11 So that's the basis that we've objected. But I just
12 want the Court to know why we we've been objecting.

13 THE COURT: May I, just to make sure I understand.
14 The 10B5 issue comes up with public corporations, these are
15 questions regarding his knowledge or lack of knowledge when he
16 made the investment decision, right, in the hedge fund, who's
17 not a registered security.

18 MR. AGNIFILO: I don't think that the Supreme Court
19 in Basic or in Matrixx makes the distinction. They are
20 talking --

21 THE COURT: You said it was not a violation under
22 10B5, that's why I thought it had to be a publicly-traded
23 corporation.

24 MR. AGNIFILO: The facts in Basic happened to
25 involve a publicly-traded corporation. But the Supreme Court

PROCEEDINGS

1 in these two cases, and there are other cases, the point that
2 needs to be made is that an omission is a different type of
3 animal than an affirmative misrepresentation. There are other
4 requirements that come with an omission that don't exist when
5 someone says something that is arguably false and misleading.
6 And that distinction is being blurred in the way the questions
7 are framed. And we've been objecting because at the end of
8 the day it suggests that somehow, that someone did something
9 wrong by not, for instance, saying that Martin was with Elea
10 Capital, when in fact, there is no establishment of a duty
11 that he disclose that information.

12 And so to the extent that it's an objective
13 reasonable investor standard, rather than a subjective
14 investor standard, it's really an irrelevant question at the
15 end of the day.

16 Your Honor, so I wanted to introduce that topic. I
17 think. That's been the reason we've been objecting to these
18 questions.

19 THE COURT: All right. I'll hear from the
20 Government.

21 MS. KASULIS: Your Honor, we need to look into these
22 two cases that counsel just raised. We do believe these
23 questions are appropriate. We have in fact also charged wire
24 fraud, where there is material omissions and
25 misrepresentations, so the omissions piece is important for us

PROCEEDINGS

1 to prove.

2 Additionally, we've been very careful in the way
3 that we're framing the questions. It's not, 'if you learned
4 X.' It's, 'if that fact exists but if there was a prior hedge
5 fund that not performed well that the defendant was associated
6 with.' So we've been careful in the way we've asked the
7 questions purposely.

8 Also, if there is a reasonable investor standard we
9 have to establish the facts to make the argument that a
10 reasonable investor would find these omissions and
11 misrepresentations material. So some of the questions go to
12 the omissions piece and some of them go to the misrep piece.

13 For example, when the defendant has said he has an
14 auditor, and if we ask, 'if there was no auditor would that
15 have been important to you,' the answer is yes. The so then
16 it establishes the misrepresentations. We can go back and
17 look at the law that counsel cites. We didn't have the notice
18 about the law prior to this point, but we can certainly raise
19 any additional issues with the Court or additional responses.
20 But this is our response now. We think it's entirely
21 appropriate. We believe we should be able to continue to ask
22 these questions.

23 THE COURT: I mean, my understanding is that the
24 Government has the burden to proof beyond a reasonable doubt
25 that whether there were material misstatements or omissions.

PROCEEDINGS

1 Materiality, you say is objective, I agree. But I think that
2 to ask the investors whether they were aware of, so for
3 example a discrepancy between what they were told and what the
4 facts may be, or whether certain facts had they known whether
5 that would have influenced their investment decision, I think
6 is something that -- again, I will look at the cases -- but it
7 seems to me, in my mind, it was directly relevant to the
8 Government's proof. I'll look at the cases as you have
9 characterized them.

10 Are we going to expect ongoing objections until this
11 is resolved? I'll look at the cases. I can't do it now
12 obviously.

13 It does seem maybe this was an issue you -- it would
14 have been nice to have had some prior notice of it. We'll
15 look at it as soon as we can.

16 MR. AGNIFILO: I started doing research when
17 Mr. Brafman objected to it with the witness who is still on
18 the stand. The objection was overruled.

19 It occurred to me at that point that we, I would
20 look into, dig a little deeper, as to why we've been
21 objecting.

22 THE COURT: I figure you're objecting for a reason.

23 MR. AGNIFILO: We tend to try to have a reason.

24 THE COURT: I would hope so.

25 MR. AGNIFILO: But I want to give your Honor a

PROCEEDINGS

1 clearer idea of the basis, that's why I'm bringing it up now.

2 MS. KASULIS: Your Honor, we have been eliciting
3 these questions in the same format with respect to each
4 witness since our first witness, which was about a
5 week-and-a-half ago now. So we will continue to solicit those
6 sorts of answers unless we hear otherwise from the Court as to
7 those questions.

8 THE COURT: We'll look into it. I can't say we'll
9 have an answer for you by the time the next witness is asked a
10 question, but we'll get to it as soon as we can.

11 It would have nice if you raised it even before the
12 lunch hour, I could have looked at the cases then. But, we
13 have what we have and I'll deal with what you've given me now.
14 All right.

15 MR. AGNIFILO: I did most the research over the
16 lunch hour. Judge, as I do further research, I share it with
17 the Court.

18 THE COURT: I appreciate that. I'm just saying this
19 has been going on for a week-and-a-half, there are sort of set
20 questions that you can expect. We've heard again and again,
21 I'm not saying it's rote, but each witness is asked to look at
22 certain documents, and asked what was important to their
23 decision et cetera, et cetera, so I'm just noting that it
24 would have been nice, as I've said before, to hear from you
25 earlier. But we'll now look into what we have been given and

MARSHALL - CROSS - MR. BRAFMAN

1 I'll try to make a decision before the next witness is asked
2 the series of questions.

3 MR. AGNIFILO: Thank you, Judge.

4 THE COURT: Did you want to bring the witness back
5 on the stand, please?

6 MR. BRAFMAN: Your Honor, when the witness testifies
7 could you just remind him, sometimes he leans back, his voice
8 doesn't get picked up on the microphone, it's hard to hear.

9 THE COURT: I will. If I'm having trouble, I'm
10 concerned about everyone else of.

11 MR. BRAFMAN: Thank you.

12 (Jury enters the courtroom.)

13 THE COURT: All our jurors are back, sir, you're
14 still under oath. Please have a seat.

15 You may proceed, Mr. Brafman.

16 CROSS-EXAMINATION

17 BY MR. BRAFMAN:

18 Q Good afternoon, Mr. Marshall.

19 A Good afternoon.

20 Q Mr. Marshall, if you can, I know it's a long day, but if
21 can you speak into the microphone, sometimes your voice
22 doesn't pick up in the back.

23 Sir, my name is Ben Brafman. We've never met; is
24 that correct?

25 A That's true.

MARSHALL - CROSS - MR. BRAFMAN

1 Q You've had a chance to speak with the Government lawyers
2 even by phone or in person before your testimony today?

3 A Yes, I have.

4 Q You knew the general scope of the questions that they
5 would be asking you, would that be a fair statement?

6 A That's true.

7 Q I want to, if we can start backwards from where I think
8 the Government left off. And if you still have 57A and B, if
9 you want to me to save time I can put my copy on the screen or
10 if you can find the documents, sir?

11 MR. SRINIVASAN: Tab 17A and B.

12 A Yes, I have it.

13 Q You have 57A, sir?

14 A Yes, I do.

15 Q 57A is the agreement that was signed in or about the end
16 of August of 2013. And it's the one that refers to 300 -- I'm
17 sorry, referring to 6300 shares of Retrophin that you were
18 supposed to receive; is that correct?

19 A That's right.

20 MR. SRINIVASAN: If the jury can see it also.

21 MR. BRAFMAN: I'm going to do that.

22 MR. SRINIVASAN: Thank you.

23 BY MR. BRAFMAN:

24 Q This is 57A, it refers to 6300 shares that you were to
25 receive, correct?

MARSHALL - CROSS - MR. BRAFMAN

1 A That's right.

2 Q If you turn to the signature page, if you can. That
3 agreement is signed by you but it was never signed by Martin
4 Shkreli, correct?

5 A I don't know whether it was or wasn't.

6 Q But this is the document that we have, and it doesn't
7 appear to have a signature for Martin Shkreli, correct?

8 A There does not appear to be one on this one.

9 Q And would you accept my representation that there is no
10 document like this that has Mr. Shkreli's of signature on it?

11 MR. SRINIVASAN: Objection, your Honor.

12 THE COURT: Sustained.

13 Q The Government has never shown you one that has
14 Mr. Shkreli's signature on it, did they?

15 A They have not, and I don't know whether he ever signed it
16 or not.

17 Q Do you know why those 6300 shares were sent to you?

18 A I do not.

19 Q Do you have any understanding of whether or not Retrophin
20 by that time was undergoing an audit? You don't know anything
21 about that, do you?

22 A I do not.

23 Q Now, you did, however, sign an agreement which we have in
24 evidence as 57B; is that correct?

25 A Yes.

MARSHALL - CROSS - MR. BRAFMAN

1 Q That agreement called for you to get \$300,000 in cash,
2 correct?

3 A Yes.

4 Q And \$37,809 -- 37,809 shares of Retrophin stock, correct?

5 MR. SRINIVASAN: Objection, your Honor.

6 THE COURT: Sustained.

7 Q Did that agreement call for you to get \$300,000 in cash?

8 A It did. I don't think it refers to the stock.

9 Q Okay. If you look at the second paragraph, it says
10 37,809 shares that you already had, correct? Do you see where
11 it says?

12 A Whereas clause, I see that.

13 Q That's the agreement, if you look at the last page, that
14 is signed both by Mr. Shkreli and by you; is that correct?

15 A Yes.

16 Q You identified those signatures on direct examination
17 correct, sir?

18 A Yes.

19 Q The agreement that Mr. Shkreli, signed that was signed in
20 or about August at the end of August 2013?

21 A I believe that's right.

22 Q You got the \$300,000 wire, which represents the \$300,000
23 cash, correct?

24 A Yes, I did.

25 Q It was sent to the wire instructions that your office

MARSHALL - CROSS - MR. BRAFMAN

1 sent to Mr. Shkreli or Mr. Greebel correct?

2 A That's correct.

3 Q So the \$200,000 that you invested in cash was repaid with
4 \$300,000, correct?

5 A Yes.

6 Q And the last valuation you had from MSMB as to your
7 investment was approximately \$282,000, correct?

8 A That was the last written one, but Martin subsequently
9 told me that it had gonna above 300,000.

10 Q But you back the 300,000, plus you also got 37,809
11 Retrophin shares, correct?

12 A That's right.

13 Q When you got the shares you testified, sir, that they
14 were restrictive, correct?

15 A That's right.

16 Q I think you testified that you got them in January of
17 2013?

18 A I think it was February of 2013.

19 Q Okay. You got them in February 2013. I think you told
20 us that the restriction was not lifted until how many months
21 later, a year, ten months?

22 A It was my understanding that legally after you have this
23 share certificate you had to wait a year and then you could
24 apply to have the restriction lifted. That was a complicated
25 process that a brokerage house handled for me. So it would

MARSHALL - CROSS - MR. BRAFMAN

1 have been sometime around February or March of the following
2 year.

3 Q Okay. Do you know, as you sit here today, how much you
4 sold those shares for?

5 A I really do not.

6 Q But you testified under oath, and I'm not suggesting you
7 lied, you may have been mistaken, you testified on direct --

8 MR. SRINIVASAN: Objection.

9 THE COURT: Sustained.

10 Q You don't know what you sold them for?

11 A I do not.

12 Q But on direct examination did you not say that you sold
13 them for somewhere between two and \$3 a share, the range you
14 got was between 40,000 and 100,000.

15 A I believe that's what I said. But I hope I prefaced it
16 but saying I really didn't remember. I was doing the best I
17 could to express a range.

18 Q You were coming up here. You knew you were going to
19 testify about your involvement with Retrophin and Mr. Shkreli,
20 correct?

21 A Yes.

22 Q You're a person who works in the stock market or with
23 investments on a regular basis professionally?

24 A I invest regularly.

25 Q But you also know, you follow stocks on a regular basis.

MARSHALL - CROSS - MR. BRAFMAN

1 Mr. Shkreli gave you some stocks you were able to follow to
2 see how they did?

3 A Yes.

4 Q The easy way to do it, if you agree, you press Yahoo
5 Finance, you put in the letters for the stock, the symbol, and
6 you get a current price, right?

7 A That's one way to do it.

8 Q And you can also go back in time and get the price at a
9 specific period in time, correct?

10 A I don't believe I've ever done that, but I accept your --
11 I assume that's possible.

12 Q Would it surprise you to know that during the period of
13 January 2014 through February of 2014 the lowest price for
14 Retrophin was \$7.19 and the highest was \$17.03?

15 A That does surprise me, but if you --

16 Q Let me show you what I've marked for identification as
17 Defendants Exhibit 4462 and ask you to look at this document
18 for Retrophin stock. And a copy to the Court.

19 THE COURT: Thank you.

20 Q Are you able to look at that document and understand it?

21 A I'm looking at it. It appears to be be historical RTRX
22 prices based on Yahoo Finance.

23 Q Okay. And am I correct, sir, that during the period in
24 question, if it refreshes your recollection --

25 MR. SRINIVASAN: Objection.

MARSHALL - CROSS - MR. BRAFMAN

1 THE COURT: What I would appreciate the parties
2 doing is allowing the question to be asked. If there is an
3 objection we'll hear it, and the witness will not answer until
4 I've made a ruling.

5 Q Does it make reference to the price range of Retrophin
6 during the period when you claimed to have sold your shares?

7 A Let me answer it this way, it doesn't refresh my
8 recollection. What stuck in any mind was one to three, but I
9 don't dispute it either because I haven't looked it up. I
10 think it's been five or six years.

11 Q I'll accept that.

12 But if hypothetically -- and we'll get to that in a
13 minute -- you sold it for seven or \$17 a share or something in
14 between, you could have gotten upwards of a half million
15 dollars for 37,000 shares; isn't that correct?

16 A Well, if I averaging \$10 a share, that would be 370,000.

17 Q You have no recollection whether you made 40,000, 100,000
18 or 370,000 on the sale of Retrophin stock?

19 A I thought it was less than 100,000. But if this is
20 correct, then obviously I was mistaken.

21 Q Okay. Could we do this, sir, so we don't delay your time
22 on the witness stand, when you get back could you check with
23 your broker and then notify the Government as to the price you
24 actually sold the stock for. And then we'll decide whether
25 the Court will allow us to introduce that into evidence?

MARSHALL - CROSS - MR. BRAFMAN

1 MR. SRINIVASAN: Objection, your Honor.

2 THE COURT: You know, it's a rather unusual request
3 I'm not --

4 MR. BRAFMAN: Judge, I'm dealing with somebody who
5 doesn't remember. I'm taking him at his word.

6 THE COURT: We'll do a sidebar.

7 (Continued on the next page.)

8 (Sidebar conference.)

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SIDEBAR CONFERENCE

1 MR. BRAFMAN: Your Honor, I think this is something
2 almost that the Court can take judicial notice of, just what
3 the price of a public security is on a given date. Because
4 these are records maintained, I can have Yahoo come in here
5 and say this is an accurate statement on what is on a given
6 date, but I'm not trying to do that. We have don't have to be
7 stuck with the answer he gave on direct examination. Without
8 any wavering he said he believes he sold the stock for two or
9 \$3 a share. He realized a gain 40 to \$100,000.

10 He's just flat out wrong. Because we know that he
11 sold it in the January/February 2014 time period. During that
12 period the stock ranged from \$7 a share to \$17 a share on
13 February 20 of 2014. And then it went up because a lot of
14 good things were happening at Retrophin.

15 So I'm accepting that he sold it then. But if he
16 kept it longer, as Mr. Blanton testified, the stock went at
17 high as \$30 a share. He said just now that Mr. Shkreli told
18 him that the value of his account was more than \$300,000.

19 I think I have a right to let this jury know that
20 although he had a lot of aggravation in getting his stock
21 cleared and sold, at the end of the day he, like everyone
22 else, made upwards of half million dollars on Retrophin stock
23 that they got for free. There is no basis.

24 If they want to respond, and what I'm suggesting is
25 if he goes to his broker and they say you sold it in tranches

SIDEBAR CONFERENCE

1 and you got \$18 or \$15, I'll accept what they say. Because I
2 know it's going to be more than two or \$3 a share. Then you
3 can put it in the record rather than have him come back on the
4 defense case.

5 MS. SMITH: Let me short circuit this. We've
6 already stipulated to an exhibit, which I believe 606 or
7 Government's Exhibit 607, but I believe 606, which shows the
8 stock price from Retrophin from the day it went public until
9 the day the defendant was removed from his position. I'm
10 saying we have the stipulation already to that document. We
11 can read that into evidence.

12 MR. BRAFMAN: I'll read it into evidence. I'm happy
13 to read the stipulation. I'm trying to demonstrate --

14 MS. SMITH: If we want to establish the stock price
15 on a given day, we've stipulated to that. I wanted to short
16 circuit.

17 MR. BRAFMAN: We'll accept the stipulation.

18 MS. SMITH: The suggestion to the jury that we ask
19 the witness to provide additional information that is not in
20 this courtroom and then bring it in, is wholly inappropriate.
21 You can establish he doesn't know.

22 MR. BRAFMAN: The witness is either unattentive or
23 has forgotten or lying, one of the three. I'm accepting the
24 fact that he's making a mistake. He's a prominent lawyer in
25 Texas. I'm not suggesting perjury. The fact that these

SIDEBAR CONFERENCE

1 people have been attentive to every word Martin Shkreli says,
2 then when you ask them how much money they sold it for, they
3 make up a preposterous number. I think it's fair for cross.

4 MS. SMITH: To suggest to the jury that while he's
5 off the stand and to bring it back, that that's normal is
6 inappropriate.

7 MR. BRAFMAN: I'll accept the stipulation.

8 THE COURT: All right. Just in terms of addressing
9 the --

10 MR. BRAFMAN: I'll read the stipulation.

11 THE COURT: We'll just tell the jury then that you
12 are withdrawing your request that he go back.

13 It was just a very unusual request that's why it
14 drew an objection and a concern that, again, we're pulling
15 things from outside the courtroom and throwing at the jury I
16 have concerns with.

17 MR. BRAFMAN: I understand. But I wasn't suggesting
18 that we pull a statement that can't be independently verified.
19 This is a fact, you can't change the price.

20 THE COURT: Why don't you withdraw the request and
21 read the stipulation.

22 MR. BRAFMAN: Yes.

23 (End of sidebar conference.)

24 (Continued on the next page.)

25

MARSHALL - CROSS - BRAFMAN

1 (In open court.)

2 BY MR. BRAFMAN:

3 Q Mr. Marshall, I'm going to withdraw the request that you
4 go check with your broker because I've been advised by the
5 Court, the Government, and my associate that we have a
6 stipulation in the case that will state as a matter of agreed
7 fact what the price of Retrophin was from the period
8 January 2014 through March of 2014. I'm referring to tab 606
9 of the Government's stipulation.

10 MR. SRINIVASAN: January 2012, your Honor.

11 MR. BRAFMAN: I understand, but I'm only focusing on
12 a little portion of it. The stipulation covers more ground,
13 I'm focusing on the period January 2014 through March of 2014.

14 MR. SRINIVASAN: Your Honor, it might be more
15 efficient if we read the stipulation in.

16 THE COURT: Are you going to read the stip, sir?

17 MR. BRAFMAN: Your Honor, there is a stipulation
18 between the United States of America and Martin Shkreli in
19 this case. I'll read it as follows:

20 "It is hereby stipulated and agreed by and between
21 the undersigned parties that Government 606 is a true and
22 accurate copy of data from Bloomberg LP detailing the daily
23 closing price and share volume of shares of Retrophin Inc. for
24 the period December 17, 2012 to September 30, 2014 and is
25 admissible as evidence at trial.

MARSHALL - CROSS - BRAFMAN

1 "Government 607 is a true and accurate copy of data
2 from Bloomberg LP detailing the daily opening intraday high,
3 intraday low, and daily closing prices of shares of Retrophin
4 Inc. for the period of December 17, 2012 to March 28, 2013 and
5 is admissible as evidence at trial.

6 This stipulation marked Government's Exhibit 85, is
7 admissible in trial. Signed by the Assistant United States
8 Attorney Jacquelyn Kasulis and counsel for Martin Shkreli."

9 Sir, the fact is that there is no dispute in this
10 record that during the period of December 17, 2012, through
11 September 2014 we can determine what the actual price and
12 closing price of Retrophin stock was, do you understand that,
13 sir.

14 A I don't dispute the stipulation.

15 Q Okay. And in accordance with this stipulation I'm going
16 to put just one page for now from exhibit, from the
17 stipulation, which is Exhibit 606 on the Elmo.

18 THE COURT: To be clear, you're offering by
19 stipulation both 606 and 607, correct?

20 MR. BRAFMAN: Correct. The stipulation is 805. 606
21 which I have in part on the Elmo, is exhibit 606, which covers
22 the period of time December 17, 2012 through September 30,
23 2014. Both are in evidence as a result of the stipulation,
24 your Honor.

25 THE COURT: All right. Thank you.

MARSHALL - CROSS - BRAFMAN

1 BY MR. BRAFMAN:

2 Q So now I'm going to show you, sir, the record of
3 Retrophin stock just for the period of January 2014. On the
4 right of it is the price of the stock that day, which is \$8 a
5 share. If we go down to February 7, 2014 it's \$10.39 a share.
6 If we go to the next page we go from February 10, 2014, it's
7 begins \$10.80 a share. If we go to March 31, 2014, it's
8 \$21.20 a share. Do you see that, sir?

9 A No, I don't see the 21; but again, I don't dispute.

10 Q Here is the 21.

11 A I see it, yes.

12 Q There is never a period of time after your restriction is
13 lifted where the stock traded between two and \$3 a share, do
14 you accept that?

15 A If this stipulation is correct, certainly I accept that.

16 Q Does it help you in anyway to understand how much money
17 you got from selling 37,000 shares if you sold them between
18 January and March of 2014?

19 A If this stipulation is correct, then I got a lot more
20 dollars than I thought I did when I testified this morning.

21 Q A lot more, as much as half million dollars more?

22 A Theoretically, but I don't think it was that much. But
23 it was clearly substantial if these figures are correct.

24 Q If the figures are correct, and they are stipulated to by
25 both parties. If you sold it in March you were getting

MARSHALL - CROSS - BRAFMAN

1 upwards of \$20 a share, at 37,000 shares that's \$600,000 maybe
2 more, correct?

3 A That imagine would be correct, yes.

4 Q Now you were an attorney for 25 years before you went to
5 work for Rosewood; is that correct?

6 A That's correct.

7 Q You were with a rather well-known, well-respected law
8 firm, correct?

9 A I hope so.

10 Q In it that law firm you were a litigation partner; is
11 that correct?

12 A That's right.

13 Q At some point you did both civil litigation and also some
14 criminal defense work; isn't that correct?

15 A The criminal defense work was only appointed when
16 somebody in the firm got appointed then they asked me to
17 handle it then for them.

18 Q You had at least some exposure to criminal defense work?

19 A Yes.

20 Q Would it be a fair statement that you decided to invest
21 in these matters -- withdrawn.

22 You decided to invest in Martin Shkreli; isn't that
23 correct?

24 A Well, I'm not sure I'd characterize it that way. I
25 invested in MSMB, but the primary motivation was Martin

MARSHALL - CROSS - BRAFMAN

1 Shkreli and his, what I perceived to be, his talent analyzing
2 and investing in small pharmaceutical stocks.

3 Q Before you ever saw a prospectus or put a dollar in MSMB,
4 you met with Martin Shkreli in person, correct?

5 A Yes.

6 Q At your offices in Dallas, Texas?

7 A That's correct.

8 Q You met him at the recommendation of Darren Blanton?

9 A That's right.

10 Q And Darren Blanton, who testified in this case, is also
11 from Texas; is that right?

12 A Yes.

13 Q Indeed your firm, Rosewood, owns the building that Darren
14 Blanton rents his offices from, correct?

15 A That's correct.

16 Q In the building that you are in, he has Colt Ventures, an
17 investment company that he runs in the same building as you?

18 A Yes.

19 Q So you've known Darren Blanton for a long time?

20 A I would say they were a tenant in the building for at
21 least several years before I met him. But I would say in
22 point of time maybe I knew who he was about a year or two
23 prior to the time I made the investment.

24 Q When you say you knew he was, you knew he was the head of
25 Colt Invest -- Invest -- Ventures?

MARSHALL - CROSS - BRAFMAN

1 A Colt Ventures.

2 Q You knew him to be a prominent person in the investment
3 community in Dallas, Texas, did you not?

4 A I'm not sure I would characterize it that way. He was
5 young, entrepreneurial, and he got some favorable press.

6 Q And he got --

7 A He wasn't considered a giant in the landscape.

8 Q We'll accept that. Will you at least agree that he was
9 somewhat of a public figure in Dallas at the time you knew
10 him?

11 A I'm not really sure I would say that. Because I didn't
12 know who he was until a year or two after, hadn't even heard
13 of him until he had been a tenant for a year or two.

14 Q Then you came to know that he was a prominent rancher;
15 would that be fair?

16 A I don't believe I ever knew that.

17 Q You didn't know he had a horse farm with 70 colts?

18 A No, I didn't.

19 Q Did you know that he was running his own capital venture,
20 capital fund?

21 A I did not.

22 Q What did you think Blanton did in the building every day?

23 A Well, he wasn't there every day, but I thought he was in
24 looking for entrepreneurial investments.

25 Q There came a time that he spoke to you about Martin

MARSHALL - CROSS - BRAFMAN

1 Shkreli?

2 A Yes.

3 Q By the time he spoke to you about Martin Shkreli you knew
4 him already, correct?

5 A Yes.

6 Q He didn't show up one day and say, hey, I want to talk to
7 you about this the guy I met. You knew who he was, he knew
8 who you were.

9 A Yes.

10 Q He knew the kind of work you did?

11 A Yes.

12 Q What he did was he said words or substance that he met
13 Martin Shkreli and he thought he was a genius?

14 A Well, let me try to answer it this way, he told me that
15 he had followed Martin Shkreli for sometime that they made a
16 lot of money with Martin Shkreli. And that Martin was very
17 focused on small pharmaceutical stocks and very good at
18 analyzing them. That's what the way I can describe it.

19 Q Did he ever describe Martin Shkreli to you as a genius?

20 A I don't think he used that term.

21 Q Did you use that term when you spoke to the Government
22 the first time you were interviewed?

23 A I don't believe I did.

24 Q I'm going to show you 3500SM-1, and I'm going to ask you
25 to hold it. Don't read it yet. Trying to use it to refresh

MARSHALL - CROSS - BRAFMAN

1 your recollection, okay.

2 Do you remember being interviewed by the Government
3 by telephone on a conference call with the SEC in or about
4 November of 2015?

5 A Yes.

6 Q And the substance of the interview was about Martin
7 Shkreli; would that be a fair statement?

8 A Yes.

9 Q One of the things you told the SEC and the FBI and all of
10 the law enforcement people on the phone was that you had met,
11 you were told about Martin Shkreli by Darren Blanton, who had
12 a family investment office in Texas?

13 A Yes, that's right.

14 Q Did you tell them that Blanton told you he invested with
15 Shkreli, and Blanton said Shkreli was a genius. Did you use
16 that word?

17 A This document uses that word.

18 Q I'm not asking you to read from the document. Does the
19 document refresh your recollection that during your interview
20 on the telephone with the SEC the FBI you told them that
21 Blanton told you that Martin Shkreli was a genius?

22 A It doesn't refresh my recollection; but I don't really
23 dispute it either.

24 Q Fair enough. Did you also tell them that you met with
25 Martin Shkreli -- can you put that down for a minute, sir --

MARSHALL - CROSS - BRAFMAN

1 did you tell the Government that you had met with Martin
2 Shkreli in your office in Texas for over -- for an hour and
3 that you were impressed by him?

4 A Yes. I think I said over an hour.

5 Q Okay. During that period did Martin Shkreli talk to you
6 virtually non-stop about drugs and pharmaceutical companies
7 and different investment thoughts that he had in the
8 pharmaceutical arena?

9 A That was part of it, yes.

10 Q Were you impressed by Martin Shkreli's knowledge on that
11 during that meeting?

12 A Extremely impressed.

13 Q Was this long before you ever invested in MSMB?

14 A Yes.

15 Q And everything Blanton had said to you in words or
16 substance when describing Martin Shkreli was confirmed by your
17 own assessment of Martin Shkreli, correct?

18 A I don't think I would agree with that characterization
19 because I can't remember everything Darren Blanton said. In
20 essence Darren Blanton was trying to get us to have a meeting
21 with Martin.

22 Q For the purpose of assessing his potential as an
23 investment, what?

24 A Yes, yes.

25 Q He did impress you, did he not?

MARSHALL - CROSS - BRAFMAN

1 A He did.

2 Q Did you have the opportunity to ask Martin Shkreli any
3 question that came to mind?

4 A I would say I did have that opportunity.

5 Q Martin wasn't there with a lawyer or anyone else, he just
6 came by himself, correct?

7 A I think Darren Blanton was in the meeting.

8 Q But Darren was not there as Martin's lawyer?

9 A No.

10 Q Darren Blanton is not a lawyer?

11 A I don't believe he is.

12 Q But you are.

13 A Yes.

14 Q And Martin -- you told us your age is 71; is that
15 correct?

16 A Yes.

17 Q In this period you're about 65, 66?

18 A Yes, 64.

19 Q Okay and Martin was someone who was relatively young
20 compared to everybody else in the room; is that correct?

21 A That's true.

22 Q When you saw him at the time, did you think he was
23 somewhere in his mid 20s, or young 20s? Did you have any
24 idea?

25 A I thought late 20s.

MARSHALL - CROSS - BRAFMAN

1 Q The people in the room, at least you, were old enough to
2 be his father?

3 A I guess that would be fair to say.

4 Q You've had 25 years of litigation experience and more
5 than 15 years of working in private equity before that
6 meeting?

7 A Yes. 25 years of trial experience and then 15, actually
8 18 years, of working in a private company, private equity was
9 a part of what we did, yes.

10 (Continued following page.)
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MARSHALL - CROSS - BRAFMAN

1 CROSS-EXAMINATION (CONTINUED)

2 BY MR. BRAFMAN:

3 Q And did you have an opportunity after he left to talk to
4 Darren Blanton? After Martin left the meeting, did you talk
5 to Darren Blanton?

6 A You asked about did I have an opportunity. Of course, I
7 had an opportunity. I think, we may have had one or two
8 conversations. After he left most of the conversations were
9 with Martin.

10 Q And the conversations with Martin were about stock tips
11 that he was giving you, correct?

12 A I'm not sure I'd describe it as "stock tips," because
13 that just --

14 Q I'm not trying to --

15 A -- implies something. He would say we're investing in
16 such and such company, here's the reason why. Frequently it
17 had to do with either they had a drug that they were hoping
18 that the FDA would approve and his opinion about that.

19 So "tip" implies to do this. These were
20 conversations which were substantive.

21 Q And these were substantive conversations that gave you
22 additional ability to sort of assess Martin's knowledge,
23 correct?

24 A That's right, yes.

25 Q And then when he would talk to you about a specific

MARSHALL - CROSS - BRAFMAN

1 company and what his plan was, you personally would follow
2 that company to see if Martin was right, correct?

3 A That's exactly right.

4 Q And you did that from the confines of your own office,
5 not in Martin's office, while you were back in Texas, right?

6 A That's right.

7 Q And would it be a fair statement that virtually
8 everything Martin told you about these companies and the
9 reasons that he thought this was going to happen was verified
10 in the future performance of those stocks?

11 A That would be -- absolutely a fair statement from the
12 time of the meeting until the time I invested in the company.

13 Q Okay, so from the time of the meeting until the time you
14 invested in the company, everything Martin said to you in
15 those telephone conversations as to pharmaceutical companies
16 you might consider and the reasons, they were all borne out by
17 your own watching of the marketing, correct?

18 A Again, you're maybe overstating when you say everything
19 he said.

20 Q I'm saying the substance of what he said.

21 A Yes, in general.

22 Q The thoughts of what he said. Do well because the FDA is
23 going to approve something, and sure enough, that happened,
24 correct? Or words to that effect?

25 A That would be an example, correct.

MARSHALL - CROSS - BRAFMAN

1 Q And you were so impressed that you actually conducted an
2 investigation to make certain that he wasn't giving you in
3 information, correct?

4 A You asked several questions, but the let me try to answer
5 it this way.

6 I was impressed with the results, and I actually
7 called a lawyer friend of mine back at Thompson & Knight and
8 said this is the kind of information he has, and can you tell
9 me if that's inside information or not? And I didn't think it
10 was, but I thought it would be prudent to get that kind of a
11 check from an outside source.

12 And this is a lawyer who is very familiar with that
13 area, and the essence of what he said was that this is not
14 information that's coming from within a company. He's using
15 information that is publicized. And his judgment and his
16 knowledge of -- of both science of the drug and also FDA
17 approval procedures to form a judgment as to whether it's a
18 good investment. That --

19 Q And he said to you, in words or substance, that what
20 Martin's telling you is public information, he's just
21 analyzing it for you, correct?

22 A I -- I guess you could -- that would be correct, yeah.

23 Q And nothing that that lawyer said to you caused you to
24 hold back from investing with Martin Shkreli, correct?

25 A That's right.

MARSHALL - CROSS - BRAFMAN

1 Q And Martin Shkreli -- and some of the stocks that he
2 spoke to you about, you actually dabbled or invested a little
3 bit; isn't that correct?

4 A Yes.

5 Q And do you remember the names of the stock?

6 A At this point I don't.

7 Q Did he tell you the short Mankind?

8 A Yes.

9 Q And did you?

10 A Yes.

11 Q And did you make money?

12 A Yes.

13 Q And can you tell this jury how much money you made?

14 A I think I invested -- I think I bought or shorted a
15 thousand shares at about 8, and I believe it went down to
16 about 4.

17 But, again, this is so long ago that this is memory
18 but, yes, I can tell that I made money on that investment.

19 Q And this is before you ever invested in MSMB, correct?

20 A Yes, that's right.

21 Q And you have other stocks that Martin discussed and that
22 you also invested in and you also made money on those stocks;
23 isn't that correct?

24 A I think there was one or two others. But I did follow
25 all of them that he -- that he suggested, either long or

MARSHALL - CROSS - BRAFMAN

1 short, and the rational for it to see if it played out whether
2 I invested or not.

3 Q And everything -- not everything, but the substance of
4 what he suggested was going to happen actually happened?

5 A That's my recollection.

6 Q And the same thing that Blanton told you, he did the same
7 thing; isn't that correct?

8 A I'm not sure I understood what you asked.

9 Q Didn't Blanton tell that you he had made millions of
10 dollars of investing with Martin Shkreli?

11 A Yes, he did.

12 MR. SRINIVASAN: Objection.

13 MR. BRAFMAN: It's not for the truth.

14 THE COURT: What did he offer?

15 Q Didn't Mr. Blanton tell you that he had made millions of
16 dollars investing with Martin Shkreli?

17 MR. SRINIVASAN: Objection, Your Honor, hearsay.

18 THE COURT: Sustained.

19 MR. BRAFMAN: May we approach, Your Honor?

20 THE COURT: Yes.

21 (Continued on the next page.)

22 (Sidebar conference.)

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SIDEBAR CONFERENCE

1 MR. BRAFMAN: First of all, we know that's true
2 because Mr. Martin testified to it. But it's not being
3 offered for the truth of it through this witness, it's offered
4 because this is part of what this, in his state of mind when
5 he makes the decision to invest in MSMB. On direct, it seemed
6 that all he did was read the memorandum and nothing else
7 influenced his decision. What Blanton says about Shkreli is
8 relevant to his state of mind as the basis for his decision to
9 go ahead with MSMB. It goes to weight not admissibility.

10 THE COURT: Okay, so it's being offered for the
11 effect.

12 MR. BRAFMAN: Correct.

13 MR. SRINIVASAN: Mr. Blanton didn't say that he made
14 millions of dollars.

15 MR. BRAFMAN: But if he tells him that, whether
16 Blanton made money or not is not the point.

17 THE COURT: Did Blanton actually tell him that?

18 MR. BRAFMAN: Yes. He said yes before the objection
19 was -- he answered it, I'll ask it again. But there's no
20 hearsay issue here, it's the fact --

21 MR. SRINIVASAN: Your Honor, Evan Greebel testified
22 on direct that when Mr. Blanton helped set up the meeting, he
23 testified to that and cross also, and that would not have an
24 establishing effect on this at all witness. Because what he
25 was he had lengthy conversations with Mr. Shkreli and

SIDEBAR CONFERENCE

1 afterwards, when he was actually considering the investment,
2 that Mr. Blanton was helped him to set up the meeting. It's
3 foundation necessarily --

4 THE COURT: Maybe you should establish whether or
5 not Mr. Shkreli indicated his investment decision as a
6 foundation.

7 MR. BRAFMAN: Okay.

8 THE COURT: And see where that goes and then you can
9 see whether or not Mr. Blanton told to him ascertain the
10 effect on Mr. Marshall's investment decision.

11 MR. BRAFMAN: Okay.

12 (End of sidebar conference.)

13 (Continued on the next page.)
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MARSHALL - CROSS - BRAFMAN

1 (In open court; Jury present.)

2 BY MR. BRAFMAN:

3 Q Mr. Marshall, would be a fair statement that before you
4 invested or made the decision to invest in MSMB, you
5 considered a number of factors; is that correct?

6 A Yes.

7 Q You considered Martin Shkreli, the personality, correct?

8 A Yes.

9 Q Martin Shkreli, who was providing you with information
10 that he verified to be accurate, correct?

11 A It turned out to be -- it played out the way he said he
12 thought it would, yes.

13 Q And the whole meeting with Shkreli was at the
14 recommendation of Blanton; is that correct?

15 A That's right.

16 Q And you understood Blanton to be telling you the truth
17 about the things he said about Mr. Shkreli, correct?

18 A I didn't see any reason to think otherwise.

19 Q All right. And I ask you, sir, did Mr. Blanton tell you
20 in his dealings with Martin Shkreli he had made millions of
21 dollars in connection with trades that Martin Shkreli
22 recommended?

23 MR. SRINIVASAN: Objection, Your Honor.

24 THE COURT: Sustained.

25 MR. BRAFMAN: Excuse me?

MARSHALL - CROSS - BRAFMAN

1 THE COURT: Sustained.

2 BY MR. BRAFMAN:

3 Q Did Mr. Blanton tell you he made millions of dollars with
4 Martin Shkreli before you invested in MSMB?

5 MR. SRINIVASAN: Objection, Your Honor.

6 THE COURT: I'll overrule that.

7 MR. BRAFMAN: You may answer the question, sir.

8 A I believe he did, yes.

9 Q And was that part of what you factored into the equation
10 when deciding whether to invest in MSMB at the end of the day?

11 A I think that statement came before we had a meeting
12 because we don't take many meetings like this, and so it's
13 kind of hard to get them into order, get people together to
14 consider an investment, so I think that came before.

15 Q And that was one of the reasons you agreed to meet with
16 Mr. Shkreli?

17 A That's right.

18 Q And also, sir, am I correct that Mr. Blanton told you
19 that he was able to withdraw money from Mr. Shkreli's fund
20 when he wanted to; isn't that correct?

21 A Yes.

22 Q And that he withdrew over a million dollars?

23 A Yes.

24 Q And that gave you some level of comfort, correct?

25 A That's right.

MARSHALL - CROSS - BRAFMAN

1 Q Now, am I correct that Mr. Shkreli also mentioned the
2 name of Even Greebel as a lawyer at Katten at some point,
3 correct?

4 A Yes.

5 Q And you knew of that firm, correct?

6 A Yes.

7 Q And that also gave you some comfort because you knew the
8 firm Katten to be a very well respected law firm?

9 A That's right.

10 Q Now, did there come a time in December of 2015 when you
11 had another telephone call with someone from the U.S.
12 Attorney's Office or the FBI, if you recall?

13 A I can't recall a date. I think you meant 2017.

14 Q No, I'm talking about 2015, and I'm just going to hand
15 you 3500SM-2. If you could like at this, sir, and refresh
16 your recollection as to whether or not you had a telephone
17 interview with the FBI on December 22nd, 2015?

18 (Whereupon, the witness is reviewing the document.)

19 A I don't remember dates, but this -- I do recall having a
20 conversation with Michael Braconi.

21 Q That's Special Agent Michael Braconi of the FBI?

22 A Yes.

23 Q And that was by telephone, correct?

24 A Yes.

25 Q And do you remember telling the FBI that you were more

MARSHALL - CROSS - BRAFMAN

1 impressed with Martin Shkreli than the prospectus?

2 MR. SRINIVASAN: Your Honor, if it refreshes his
3 recollection, the witness has the document.

4 THE COURT: All right.

5 Read the document, and then he'll ask you a
6 question.

7 BY MR. BRAFMAN:

8 Q If you don't remember, you can use it to refresh your
9 recollection, but am I correct, sir, that on that telephone
10 conversation with the FBI, you told him that you were more
11 impressed with Martin Shkreli than the actual prospectus?

12 A Let me answer it this way. I think I did tell him that,
13 but this states that I had the prospectus when we first met,
14 and I don't recall that being the case.

15 Q Okay.

16 A It's possible.

17 Q All right.

18 A But I don't recall it that way.

19 Q All right. But you did say that you were more impressed
20 with Martin Shkreli than the prospectus, right?

21 A I think that's right, yes.

22 Q You had -- you've seen in your career 25, a hundred
23 prospectuses? Would that be a fair statement, maybe on the
24 low side?

25 A I'd say I've seen that many.

MARSHALL - CROSS - BRAFMAN

1 Q Okay. And have you ever seen a Martin Shkreli?

2 A I'm sorry, have I ever seen Martin Shkreli?

3 Q A Martin Shkreli.

4 A You mean another person like Martin Shkreli?

5 Q Yes.

6 A I would say not.

7 Q Now, did you tell the government on that date that before
8 you ever invested Blanton told you that he had withdrawn over
9 a million dollars from his investments with Shkreli?

10 MR. SRINIVASAN: Answered and answered, Your Honor.

11 THE COURT: Sustained.

12 Q Let's move on, sir.

13 There comes a time when you have a sit down,
14 in-person meeting with the government in Texas; is that
15 correct?

16 A Yes.

17 Q And rather than bring to you the U.S. Attorney's in Texas
18 they brought to you the U.S. Attorney's Office -- I'm sorry,
19 let me stop.

20 Rather than bring you to the U.S. Attorney's Office
21 in New York, they met with you in the U.S. Attorney's Office
22 in Texas, is that correct?

23 A That's right.

24 Q And among the people meeting you in Texas were one of the
25 assistant United States attorneys prosecuting this case?

MARSHALL - CROSS - BRAFMAN

1 A I believe the woman's name was Alix Smith.

2 Q Okay. And you also had several members of law
3 enforcement or FBI at that meeting, correct?

4 A I remember one being there.

5 Q Okay. And you sat with them for several hours; would
6 that be fair?

7 A I'd say one to two hours.

8 Q And did you give them your background, your personal
9 background during that meeting?

10 A Yes.

11 Q And did you tell them you worked with Thompson & Knight
12 from 1970 to 1995?

13 A I assume I did. That is correct, any way.

14 Q All right. And did you tell them on that date that you
15 were working as general counsel and vice president for TRC
16 until you were promoted to chief executive officer in 1998?

17 A I think I was promoted in 1999.

18 Q Okay. And what is TRC?

19 A That's The Rosewood Corporation.

20 Q And is it a private equity portion of The Rosewood
21 Corporation?

22 A No, that's the whole corporation.

23 Q And what did you do?

24 A Now?

25 Q Yes?

MARSHALL - CROSS - BRAFMAN

1 A I'm the chairman of the board.

2 Q But then what can you do? For Rosewood?

3 A You mean at the time I invested with Martin or the time I
4 became president?

5 Q At the time you were investing with Martin.

6 A I was president and CEO. And the way it's structured, we
7 have -- The Rosewood Corporation is the parent company, and it
8 has operating subsidiaries. So among those subsidiaries
9 there's branching, real estate, oil and gas domestic, oil and
10 gas foreign, and Rosewood Private Investments. And then we
11 also have something called Rosewood Management Corporation,
12 which manages certain trusts. And within that corporation, we
13 select more private investments, like stock funds, a few hedge
14 funds, bond funds and so forth.

15 Q And did you tell the government that part of your
16 responsibilities was to identify investments in private
17 equity?

18 A I don't remember if I told them that, but if I did, it
19 would be true.

20 Q Okay. And by identifying the investments in private
21 equity it requires you to sort of look at the potential of the
22 company before it becomes even a real company sometimes,
23 right?

24 A Yes, that's right.

25 Q And sometimes a company comes to you as a startup that

MARSHALL - CROSS - BRAFMAN

1 may have potential, and you do an analysis to see if it's
2 appropriate for TRC to invest; is that correct? This is what
3 you do at the time?

4 A Well, I -- I would say that -- that we really don't look
5 at startup companies for investment.

6 Q Okay. Do you look at small companies that need capital?

7 A Yes.

8 Q All right.

9 A By startup, that's what it implies. It's -- it's either
10 just getting going or maybe it's a startup of a company.

11 Q Okay.

12 A And more -- our interest was to find a company that had
13 some kind of a problem and that we felt we could fix by good
14 management, or maybe it had a -- it was starved for capital,
15 so we put in capital and make the investments that it needed
16 for a long time and grow it that way.

17 So I'm not trying to argue with you, I'm just trying
18 to explain.

19 Q Okay.

20 A By using words that make sense to me.

21 Q But in doing that, you do meet with lawyers and owners of
22 companies, correct?

23 A Yes.

24 Q And you do meet about representatives of companies?

25 A Yes.

MARSHALL - CROSS - BRAFMAN

1 Q And they pitch you for capital and try to explain the
2 company and who they are and what they would like to become;
3 fair statement?

4 A Yes, I would say so.

5 Q And sometimes you turn them down, and sometimes you would
6 decide to invest on behalf of TRC, correct?

7 A Yes. But almost always we turn them down.

8 Q Okay. Because you have the ability to be selective,
9 correct?

10 A We hope so.

11 Q Okay. Now, at the meeting on at the U.S. Attorney's
12 Office in Texas, did you tell the government that Mr. Shkreli
13 reminded you of a character from "Rain Man"?

14 A I don't remember if I said that at that meeting, but if I
15 did it -- it probably would be true. Because that was the
16 impression that I had.

17 Q All right. Well, let's just take a look at 3500SM-3,
18 dated 3/7/2'16. And look at the bottom paragraph and read it
19 to yourself, and tell me whether or not it refreshes your
20 recollection that during that meeting in Texas, you told the
21 government that Martin Shkreli reminded you of a character
22 from "Rain Man".

23 (Whereupon, the witness is reviewing the document.)

24 Q It's on the bottom of the first page to read.

25 A Yes, I'm reading that.

MARSHALL - CROSS - BRAFMAN

1 When I did these interviews, I didn't have the
2 benefit of notes or any files, so I was operating from memory.

3 Q Okay.

4 A But if your main question is did Martin Shkreli remind me
5 of Dustin's Hoffman's character in "Rain Man", my answer would
6 be, yes.

7 Q All right. So let's do that for the benefit of the jury,
8 if you could explain that a minute, in case some people
9 haven't seen "Rain Man".

10 Dustin Hoffman in "Rain Man" plays an autistic
11 genius; is that correct?

12 A I believe he did does, yes.

13 Q And his older brother Tom Cruise is saddled with the
14 responsibility for him, and that's pretty much the premise of
15 movie. Would be that a fair statement?

16 MR. SRINIVASAN: Objection.

17 THE COURT: Overruled.

18 You can answer the question, but I hope you would
19 move on after you get an answer to this question.

20 MR. BRAFMAN: I'm going to move on from the movie,
21 but I'm going to ask him about --

22 Q What about Martin Shkreli at the meeting you had with him
23 made you believe that he was a "Rain Man" character?

24 A Well, let me just answer it this way. I did not at the
25 meeting conclude that Martin Shkreli was autistic or on the

MARSHALL - CROSS - BRAFMAN

1 autistic spectrum or try to make a diagnosis like that.

2 What I thought was that this was a person who was
3 intensely focused on one small segment of the stock marketing
4 and just lived it day and night and was so focused that that
5 was his investment advantage.

6 Q And that reminded you of "Rain Man"?

7 A I would say that my recollection of the movie was that
8 the character was very -- very, very focused in one area and
9 one area, or maybe had to do with math, and that he could come
10 up with answers that other people wouldn't come up with. And
11 the reference here was just that this was an intensely
12 focused, bright guy who knew his stuff.

13 Q Had you ever characterized any other investment picture
14 in your office to remind you of Dustin Hoffman's character in
15 "Rain Man"?

16 A No.

17 Q Okay. So Martin impressed you as being Rain Man,
18 correct?

19 A No, I would just say he impressed me as being intensely
20 focused and extremely knowledgeable about this wear.

21 Q But the "Rain Man" person who you're comparing him to,
22 would you agree is severely autistic in the film?

23 MR. SRINIVASAN: Objection, Your Honor.

24 THE COURT: Sustained.

25 Q Is he brilliant in the film?

MARSHALL - CROSS - BRAFMAN

1 A Well --

2 MR. SRINIVASAN: Objection.

3 A Well, Blanton said he was sort of, you know, socially --

4 MR. SRINIVASAN: Objection.

5 Q Awkward?

6 THE COURT: Sustained.

7 Q Did Martin Shkreli at this meeting, after which you
8 characterized him as Rain Man, did he rattle off statistics be
9 drug names with nonstop virtually for half the time he was in
10 your office?

11 A No.

12 Q Did he impresses as being brilliant?

13 A I'd say he impressed me with being smart and highly
14 focused.

15 Q Did he impresses as a scatterbrain?

16 A No, I wouldn't say so, because it sort of went in a
17 series of discussions. There was a stock -- you know, I was
18 trying to find out how much he knew and the depth of his
19 knowledge. And we had somebody in the office that we met with
20 only because they were a friend of a family member. And they
21 came in and they had an idea that was absolutely laughable.
22 It was a small Australian company that had a video of a swim
23 mouse.

24 Q What does that have do with what we're talking about?

25 A Well, it's an answer to your question, because we asked

MARSHALL - CROSS - BRAFMAN

1 if he heard of this company.

2 Q You asked Martin?

3 A Yes. Prana Pharmaceuticals.

4 Q And he knew everything about it; isn't that correct?

5 A I don't know if he knew everything, but the point is that
6 he -- he gave about a ten-minute discussion about the company,
7 its prospects. He had seen the film, probably the video, and
8 he had the same conclusion that we did, that just because a
9 mouse learned to swim over and stand on a bridge so it
10 wouldn't drown, that didn't mean the drug was going to be
11 successful for Alzheimer's.

12 Q Were you pretty surprised that Martin knew that
13 information?

14 A Yes, I was.

15 Q And were the people in the room besides you -- withdrawn.

16 Did you discuss the fact that he knew this remote
17 piece of information after the meeting with any of the people
18 in your firm?

19 A Yes.

20 Q And was that kind of performance by Martin, in part,
21 which led you to believe that he was so intensely focused that
22 you could characterize him as the character in "Rain Man"?

23 MR. SRINIVASAN: Objection, Your Honor.

24 THE COURT: Sustained.

25 MR. BRAFMAN: Your Honor, may we approach?

MARSHALL - CROSS - BRAFMAN

1 THE WITNESS: Can I answer, maybe it will save time?

2 THE COURT: It may save time, but there's an
3 objection to the question.

4 (Continued on the next page.)

5 (Sidebar conference.)

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SIDEBAR CONFERENCE

1 THE COURT: How much more are we going to do on
2 this?

3 MR. BRAFMAN: Judge, they are not being fair. This
4 is their witness, who of all of the people in all of the
5 movies in America, characterizes him as Dustin Hoffman in
6 "Rain Man".

7 And just so I would be up to speed, I watched that
8 movie again recently so I would not make a mistake.

9 In "Rain Man" the man is diagnosed as --

10 MR. SRINIVASAN: We don't have to go into all the --

11 MR. BRAFMAN: It is the issue.

12 MR. SRINIVASAN: If he doesn't believe him, let's
13 argue with he Court and the witness has explained -- he
14 doesn't believe it explains what you meant when he made that
15 reference. Mr. Brafman might disagree with that and argue it
16 in closing, but I don't know how much -- how many more
17 questions we can ask about "Rain Man".

18 MR. BRAFMAN: On cross-examination, I'm generally
19 not bound by the witness' answer, especially if I don't
20 believe him.

21 THE COURT: What do you not believe?

22 MR. BRAFMAN: I don't believe why he said Martin
23 reminded him of Dustin Hoffman. Because Dustin Hoffman in
24 that movie is severely autistic, he has no people skills, and
25 he gets himself in all these kinds of awkward positions by

SIDEBAR CONFERENCE

1 coming up with incredible amounts of information that no
2 normal person --

3 THE COURT: Are you trying to allege, are you going
4 to be arguing that he's severely autistic?

5 MR. BRAFMAN: No, I'm attempting to argue --

6 THE COURT: Okay.

7 MR. BRAFMAN: -- that if you compared him to "Rain
8 Man," he came to one of two conclusions, either -- one, of
9 three conclusions; either Martin was autistic, and many
10 autistic people are brilliant beyond words, and/or that if he
11 was brilliant beyond words, that part of the reason he
12 invested is because he saw Martin as an idiot savant; being
13 socially awkward by having almost supernatural knowledge.

14 THE COURT: But the question I have is why is it so
15 critical to you that you put some sort of label on Mr. Shkreli
16 as being a rain man?

17 MR. BRAFMAN: I didn't.

18 THE COURT: But the reference was what he meant was
19 that he very smart, he was able to understand very a small
20 segment of the pharmaceutical investment, you know, world.

21 I'm just not sure how much more we have to go on
22 about Mr. Hoffman's character. I don't even know if the
23 portrayal of him as an autistic, a severely autistic person
24 who's a genius in that movie is accurate.

25 You've probed his understanding of the reference,

SIDEBAR CONFERENCE

1 but I don't think you're going to be able to get that
2 Mr. Shkreli is autistic, that that somehow is relevant to the
3 jury's understanding.

4 MR. BRAFMAN: The defendant's state of mind, when he
5 was making these representations to people, is a question --
6 let me finish -- is a question of fact that the jury will have
7 to decide; if he viewed intentionally, if he supposed that
8 something's off about Mr. Shkreli, and there is something off
9 about Mr. Shkreli that is obvious to someone who never met him
10 before.

11 THE COURT: Well, are you arguing that he lacks
12 mental capacity --

13 MR. BRAFMAN: No.

14 THE COURT: -- to form intent?

15 MR. BRAFMAN: No. No.

16 THE COURT: How does it -- that's what it sounds
17 like you're arguing, that the autism can impair his ability to
18 form the intent.

19 MR. BRAFMAN: No, but it weighs on whether or not at
20 the time he is making a statement, he understands that if
21 someone else is going to be relying on the statement, and it
22 better be a hundred percent accurate, or you could end up
23 going to jail later. And the character in the Dustin Hoffman
24 movie, makes all sorts of statements that people look at him
25 like he's crazy, and that's what he's referring to.

SIDEBAR CONFERENCE

1 MR. SRINIVASAN: Your Honor, what he was referring
2 to, you can't just do a diminished capacity defense with
3 questions like this, Your Honor, there is a proper way to do
4 it is and it's not being established in this case. And he's
5 trying to badger this witness into changing his testimony when
6 what he said was, we think, that he agreed that Martin Shkreli
7 was a smart, brilliant --

8 MR. BRAFMAN: I'll move on.

9 MR. SRINIVASAN: -- diminished capacity of an idiot
10 savant, for example.

11 MR. BRAFMAN: I'll move on and rely on the jurors'
12 understanding of what the reference to "Rain Man" is.

13 THE COURT: Assuming they even they saw the movie.

14 MS. KASULIS: He already testified about what his
15 interpretation was that --

16 MR. BRAFMAN: I'll move on. I have much to do.

17 THE COURT: Okay.

18 MR. BRAFMAN: And we're beyond "Rain Man".

19 THE COURT: Okay.

20 (End of sidebar conference.)

21 (Continued on the next page.)
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MARSHALL - CROSS - BRAFMAN

1 (In open court; Jury present.)

2 BY MR. BRAFMAN:

3 Q One of the things you told us is that impressed you at
4 that meeting with Mr. Shkreli in Texas was that he knew
5 everything about Prana Pharmaceuticals; is that correct?

6 A Yes.

7 Q And was that a subject that you believed was widely known
8 about Prana?

9 A I didn't think Prana was wildy known.

10 Q And yet the minute you mentioned it, Martin Shkreli
11 focused on it immediately, correct?

12 A Yes.

13 Q And everything he told you in that room, you knew to be
14 verified by the independent information you had?

15 A Well, let me put it this way. He had seen the same film
16 of the swimming mouse that we had seen and reached exactly the
17 same judgment that we had, that that was no basis to invest in
18 a company that's going to solve the problem for Alzheimer's.

19 Q So among other things, you made your decision after
20 meeting with Mr. Shkreli that it was not an appropriate
21 investment in your mind at the time for TRC, correct?

22 A That's right.

23 Q And TRC, and you said earlier, you know, picks and
24 chooses its investment opportunities and generally does not
25 invest in companies that had not yet been formed, correct?

MARSHALL - CROSS - BRAFMAN

1 A That's right.

2 Q But you personally made the decision some months later to
3 invest in Martin Shkreli, MSMB, correct?

4 A Yes.

5 Q Now, you testified that you are chairman of the board now
6 of TRC?

7 A That's right.

8 Q And you understand that as a member of board you have
9 fiduciary obligation to the company that you are a board
10 member of?

11 A Of course.

12 Q And since the Sarbanes-Oxley Act by Congress, you have to
13 even be more careful as a member of board to take your
14 responsibilities seriously, correct?

15 A I'd say I always took them seriously.

16 Q Okay. And the board of a company like yours makes
17 important decisions that bind the company, correct?

18 A Yes. From time to time they do.

19 Q And they could have serious consequences if that's the
20 wrong decision, so you think carefully about them; fair
21 statement?

22 A For any board action, I would say, yes. We think them
23 through and try to be careful.

24 Q Now, did Martin Shkreli also give you an understanding
25 that you should watch the stock BioMarin?

MARSHALL - CROSS - BRAFMAN

1 A No. I can answer what he did say.

2 Q Okay.

3 A I asked him if there were any stocks that he thought had
4 really good fundamental research that, you know, would be a
5 good sound long-term investment, and he mentioned BioMarin.

6 Q And did you buy it?

7 A Yes, I did.

8 Q And did you make money?

9 A Yes.

10 Q And was Martin correct? The stock went up?

11 A Yes. Yeah.

12 Q Now, were you impressed with Martin's knowledge of the
13 Food and Drug Administration approval process?

14 A Yes.

15 Q And it was fairly impressive. Would that be a fair
16 statement?

17 A Yes.

18 Q You know, as someone who has been in sort of the
19 investment community for a long time, that the Food and Drug
20 Administration has the capacity to either kill a drug stock or
21 make it a wonderful success, correct?

22 A Well, they can kill it if they only have one drug and
23 they don't approve it. And if they approve a drug, that is a
24 positive affect for the company.

25 Q So having an understanding of the Food and Drug

MARSHALL - CROSS - BRAFMAN

1 Administration, when you're in the biotech sector is
2 important. Would that be a fair statement?

3 A Yes, it would.

4 Q And Martin Shkreli impressed you with his knowledge of
5 the Food and Drug Administration approval process?

6 A Yes, and I would add his judgment. It was -- he knew the
7 way they operated, and he sort of combined his knowledge of
8 the science with his judgment as to whether -- for example, if
9 there's a trial that they -- when it was properly structured
10 and whether it would be impressive enough to the FDA to result
11 in approval. So it's kind of a combination process plus the
12 science.

13 Q Now, I think you mentioned this before, but at that
14 meeting you said to the U.S. Attorney's Office that the fact
15 that Evan Greebel was Martin's lawyer was a positive sign for
16 you.

17 A Yes.

18 Q And when you were at Holland & Knight, were you aware of
19 Katten Muchin as a competitive law firm out there or as
20 another law firm of prominence?

21 A My firm was Thompson & Knight but, yes, I was aware of
22 them as being a reputable New York City based firm while I was
23 practicing law and subsequently as well.

24 Q Now, in of January 2011, you made the decision to invest
25 \$200,000 from your IRA, correct?

MARSHALL - CROSS - BRAFMAN

1 A I think the decision was made after I went through the --
2 the investment circular, which could have been December.

3 Q All right. And then you actually sent in the money
4 sometime in January; is that correct?

5 A Yes.

6 Q And did you know that Darren Blanton came to New York and
7 visited the offices of MSMB Capital?

8 A Yes.

9 Q And when he came back, he told you that he was there; is
10 that correct?

11 MR. SRINIVASAN: Objection, Your Honor.

12 THE COURT: Overruled.

13 MR. BRAFMAN: You may answer, sir.

14 A He told me that he had come to the offices and met the
15 people and was impressed with their operation.

16 Q And I think what you said was to the U.S. Attorney's
17 Office was that -- the words you used were that Blanton vetted
18 MBC Capital for you; is that correct?

19 A Let me just say I don't remember if I said then, but that
20 is what -- the impression that I got.

21 Q Okay. And when you vet a company, you look at it and see
22 if it impresses you, in words or substance, correct?

23 A That would be right.

24 Q And that Mr. Blanton, when he came back, told you that he
25 was favorably impressed with their operation, and that made

MARSHALL - CROSS - BRAFMAN

1 you more comfortable, correct?

2 A Yes.

3 Q Now, did you ever ask Mr. Blanton how many shares of
4 Retrophin he was given when he signed his agreement at the end
5 of the day?

6 A I don't recall ever asking him that, no.

7 Q Okay. And did Mr. Blanton ever tell you, in words or
8 substance, that he made several million dollars on his
9 investment into MSMB?

10 MR. SRINIVASAN: Objection, Your Honor.

11 THE COURT: Sustained.

12 Q Do you know whether or not he currently has 150,000
13 shares of Retrophin? Yes or no; do you know?

14 A I do not.

15 Q Okay. Now, I want you to turn, sir, to what's in
16 evidence as Government Exhibit 6, which is the confidential
17 offering memorandum for MSMB Capital Management; is that
18 correct? Do you have it, sir?

19 THE COURT: It's at Tab 15.

20 A Yes, I have it.

21 Q Okay. I'm just going to go through some of the areas in
22 this book.

23 Now, you have seen documents like this before?

24 A Yes.

25 Q Offering memorandums?

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1 A Yes.

2 Q Offering memorandums for companies that were not public
3 companies but they were private companies?

4 A Private companies or funds, yes.

5 Q Okay. And you understand that before an investor can
6 even invest, they have to be given a copy of the private
7 offering memorandum, they have to verify that they've read it
8 and they have to sign a subscription agreement, correct?

9 A That's right.

10 Q And they also have to meet certain criteria as an
11 investor, correct?

12 A Yes.

13 Q They have to establish a certain degree of net worth,
14 correct?

15 A Yes.

16 Q And they have to, in effect, assure the people at the
17 company that you're not playing with rent money, correct, more
18 or less?

19 A The point of all this is that they need to know that the
20 investor is not only a sophisticated investor and can form a
21 judgment about the investment, but also has enough net worth
22 and/or current income that they have afford to make an
23 investment like this.

24 Q And afford to lose the investment, if that's what
25 happens, correct?

MARSHALL - CROSS - BRAFMAN

1 A Yes.

2 Q Now, if you look at the first page under the cover page,
3 I'll put it up here, this is 00128. I'm going to point to a
4 paragraph lower down, which is in the bold letters.

5 Do you see it?

6 A Yes.

7 Q An investment to the partnership will involve significant
8 risk. There is no assurance that the partnership will achieve
9 its investment objectives, will be profitable. See risk
10 factors.

11 That's standard language in a private placement
12 memorandum; is that correct?

13 A It is, yes.

14 Q And you're supposed to read it, and despite the risks,
15 verify that you're willing to invest, correct, sir?

16 A Yes.

17 Q And when you say sophisticated investors, it's generally
18 meant for people who understand the nature of the risks being
19 described in a private placement memorandum? Correct?

20 A That would be right, yeah.

21 Q And I'd like you to look at page 1. And I think if you
22 look down the -- sorry. If you look down towards the bottom
23 of the page where it says "general partner"?

24 A Yes.

25 Q I'm going to read that, start with the general partner,

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1 which is on the fourth line down. Can you follow along
2 please.

3 The general partner will have full responsibility
4 for the management and control of the partnership. Mr. Martin
5 Shkreli is the managing member of a general partner, as such
6 Mr. Shkreli will be the individual primarily responsible for
7 the management and control of the partnership.

8 Did you understand that before you invested?

9 A Yes.

10 Q So you were essentially relying on Martin Shkreli as the
11 general partner?

12 A That's right.

13 Q Now, let me just ask a general question. When you invest
14 in a private placement, in a fund that has just no background,
15 no track record, you understand that as a limited partner
16 you're really relying on the general partner?

17 A Yes.

18 Q Now, you have investments, either on behalf of your
19 company or yourself, in other equity funds, correct?

20 A Yes.

21 Q And do you think they have to call you every time they do
22 a trade?

23 A No.

24 Q Now, do they have to call you to tell you the outcome of
25 a trade?

MARSHALL - CROSS - BRAFMAN

1 A No.

2 Q You're relying on them -- as a limited partner, you rely
3 on the general partner to make those decisions, correct?

4 A Yes.

5 Q And you've been around a while and you know that when
6 you're in the stock market, you can have good days and bad
7 days, correct?

8 A Sure.

9 Q And if we looked at what happened, you know, in the
10 history of the market, there are times when even the most
11 sophisticated investors have essentially lost their shirt;
12 fair statement?

13 A I'd say some sophisticated investors. I don't recall
14 Warren Buffett ever having that.

15 Q Well, maybe Warren Buffett is the exception.

16 A In general, I would agree that even smart, sophisticated
17 investors can lose money, sure.

18 Q Sometimes they make a bet and it turns out bad.

19 A Right.

20 Q And whatever you want to say about the stock market, and
21 however much research you use, at the end of the day, it's
22 just a form of gambling; isn't it?

23 A No, I don't agree with that.

24 Q All right. It's form of risk taking?

25 A Yes.

MARSHALL - CROSS - BRAFMAN

1 Q All right. And when you take a risk, sometimes you win
2 and sometimes you lose?

3 A Yes.

4 Q Now, if you turn to page 4, Mr. -- I'm sorry. On direct
5 examination, the government asked you a question about the
6 beginning of this paragraph on capital withdrawals.

7 Do you remember?

8 A Yes.

9 Q And he read a few lines to you, and you said that's
10 correct.

11 I want to go to the end of the paragraph where it
12 says "the general partner."

13 Do you see that?

14 A Yes.

15 Q Four lines from the bottom, five lines from the bottom?

16 A Yes.

17 Q All right. And it starts with: The general partner will
18 have the right to suspend redemptions under certain
19 circumstances. The general partner may withdraw any portion
20 of its capital without prior notice, if the limited partners
21 see the partnership agreement withdrawals by partners.

22 Did I read that correctly, sir?

23 A You did.

24 Q And did you read that before you invested?

25 A Yes.

MARSHALL - CROSS - BRAFMAN

1 Q And that's standard language in a private placement
2 memorandum when it's a limited partnership with a general
3 partner, correct?

4 A I'm not sure that this is standard language.

5 Q But that's the language in this memorandum?

6 A It is, yes.

7 Q And it refers you to the partnership agreement?

8 A Yes.

9 Q And the partnership agreement was an exhibit to the
10 private placement memorandum, correct?

11 A Yes.

12 Q And it's something which you also read before, and that's
13 what the partnership agreement provides, that the general
14 partner has the right, under certain conditions, to suspend
15 redemptions, correct?

16 A Yes.

17 Q Now I think Mr. --

18 MR. BRAFMAN: How do you pronounce your last name?

19 MR. SRINIVASAN: SRIN-A-VAS-SIN.

20 Q The government asked you on direct examination whether or
21 not you understood that there was going to be an investment in
22 any restricted securities; is that correct?

23 A I don't recall being asked that.

24 Q Okay. But I'm sorry, the government asked what you
25 thought you were investing in, and I think you said you

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1 thought you were going to invest in a fund that was long and
2 short, correct?

3 A Yes. I was told that the fund invested in public
4 securities, and in some cases they took long positions,
5 meaning that they would hope that they felt stock value would
6 go up, and other cases they shorted the stock, which
7 essentially was an investment predicated on the idea that the
8 stock was overpriced and would go down.

9 Q Now, before you invested, I think you were taking into
10 consideration what Mr. Blanton said, what Mr. Shkreli said,
11 and also what was written in the private placement memorandum,
12 correct, among other things?

13 A I would -- I would say that all these are true except
14 that what Blanton said only verified what Martin had already
15 said.

16 (Continued on next page.)

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1 EXAMINATION

2 BY MR. BRAFMAN:

3 (Continuing.)

4 Q Okay.

5 A That they had a invested substantial amount of money,
6 withdrawn substantial amount of money; that he was responsive
7 to withdrawal requests, which was what Martin had told us when
8 we met and what was also put in the partnership agreement and
9 the offering memorandum.

10 Q Did you have any understanding that part of the
11 investments might be in illiquid securities?

12 A I don't think that was ever discussed, although I
13 wouldn't be surprised if there's language to that effect in
14 here because you often see that.

15 Q So look at Page 7, and you're a hundred percent right.

16 On the bottom of Page 7, there is a bold caption
17 that reads, "Restricted Securities."

18 Do you see that?

19 A Yes.

20 Q And it basically tells you in clear English language, I
21 have Page 7 up, "The partnership may invest in so-called
22 restricted securities i.e., securities to which the public
23 resale is currently restricted under the Securities Act of
24 1933 as amended."

25 The Securities Act; correct?

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1 A That is what it says, yes.

2 Q And just so we understand, restricted securities
3 includes, for example, what you ultimately got as a share
4 certificate of Retrophin which was restricted; is that
5 correct?

6 A Well, it's true that that was a stock certificate that
7 was restricted.

8 Q That's all I'm trying to establish. Whether a stock
9 certificate that says "restricted" under the Securities and
10 Exchange Act of 1933, that means until you remove the legend,
11 you cannot transfer or sell the stock; correct?

12 A That's right.

13 Q And the stock certificate you received from Retrophin at
14 the end of the day was, in fact, restricted and you had to
15 have it removed; correct?

16 A That's right.

17 Q And it was removed; correct?

18 A Well, it wasn't removed by -- Martin agreed to remove it
19 but never did. So after a year expired, the brokerage firm
20 went through a process of getting the restrictions removed.

21 Q But the question was, at the end the day, the stock
22 became freely tradeable and the restriction was lifted?

23 A It's got to be the other way around. After a year,
24 you're entitled to make application to have the restricted
25 legend removed, and when that's removed then you can sell the

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1 stock.

2 Q Okay.

3 Just so we're clear, when it came it was Rule 144
4 stock as you would call it. Restricted securities, correct?

5 A I'm not sure about whether it was Rule 144, some other
6 rule, but I wouldn't dispute that either.

7 Q And then, what you had to do was make application to
8 remove the restriction so that you could trade it and sell it?

9 A That's right.

10 Q You took care of that, you brokered it, and you were able
11 to sell it?

12 A Yes.

13 Q And however much you realized from the gain, I think we
14 established you're not sure, but you were ultimately able to
15 sell it in the market; correct?

16 A Yes, that's right.

17 Q So while when you got it, it was not marketable, it was
18 ultimately marketable?

19 A Yes.

20 Q Now, I think they showed you Page 10. If you could turn
21 to Page 10, sir.

22 Page 10 is labeled "Risk Factors." Is that correct?

23 A Yes.

24 Q All right.

25 The Government read the paragraph under "Risk

MARSHALL - CROSS - BRAFMAN

1 Factors" and I think it says, "All security investments risk
2 the loss of capital. There can be no assurance that the
3 partnership will be profitable, but that it will not incur
4 losses. Protective investors should, among other matters,
5 consider the risks summarized below before investing in the
6 partnership. And investment in the partnership is
7 speculative, involves a high degree of risk, and is suitable
8 only for persons who are willing and able to assume the risk
9 of losing their entire investment."

10 You understood that before you invested; correct?

11 A Yes, I read that language.

12 Q Okay. But you also read the language below which the
13 Government did not point you to, so let me ask you if it has
14 the following language.

15 "Lack of operating history, experience of portfolio
16 manager. The partnership is a newly formed enterprise and
17 will have no operating history upon which basis potential
18 investors may evaluate its performance."

19 Am I correct?

20 MR. SRINIVASAN: Objection.

21 Q Am I reading that correctly?

22 THE COURT: Overruled.

23 A You read that correctly.

24 Q Did you read that paragraph before you invested?

25 A Yes, I did.

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1 Q And the next paragraph begins with, "Dependence Upon
2 portfolio manager."

3 Let me stop for a minute. You understood the
4 portfolio in MSMB to be Martin Shkreli; correct?

5 A Yes.

6 Q And it reads, "As noted above, the success of the
7 partnership will substantially depend upon the efforts of the
8 portfolio manager, Mr. Shkreli. In the event that Mr. Shkreli
9 ceases to be responsible for the partnership investments for
10 any reason and although another person now may be available to
11 the general partner and the advisor, the operations of the
12 partnership will likely be adversely affected."

13 Now, Mr. Shkreli was the person who you were relying
14 on to administer this portfolio.

15 Correct, sir?

16 A That's correct, yes.

17 Q All right.

18 Now, if you could just read with me in the middle of
19 the next paragraph where my finger is pointed, the paragraph
20 begins with, "Dependence upon individual judgment and skill,"
21 you're talking about Mr. Shkreli; correct?

22 That refers to Mr. Shkreli; correct?

23 A It refers to the portfolio manager which I took to be
24 Mr. Shkreli; correct.

25 Q Now, if you read down further, I'm going to begin with

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1 "Accordingly."

2 "Accordingly success of the partnership will be
3 dependent to a large extent on the investment skills and
4 judgment of the portfolio manager. There can be no assurance
5 that the portfolio manager will successfully identify
6 investments that fulfill the investment objective of the
7 partnership, or that such investments will not cause the
8 partnership to experience losses."

9 And you understood that the portfolio manager is
10 going to be making judgment calls, but his judgment may not
11 always be right; correct, that you're basically being told?

12 A Yes, but he's making judgment calls within certain
13 parameters.

14 Q I understand, we'll get to those in a minute.

15 "Alternative investing." Generally, the first
16 sentence reads, "The partnership is designed for investors
17 seeking potentially long-term growth from alternative
18 investments who do not require regular current income who can
19 accept a high degree of risk in their investment."

20 Let me stop there. This money was from your IRA;
21 correct?

22 A Yes.

23 Q IRA is an Individual Retirement Account?

24 A That's correct.

25 Q The money you want to use when you retire?

MARSHALL - CROSS - BRAFMAN

1 A That's right.

2 Q You have not retired yet; correct?

3 A That's right.

4 Q And the IRA now has substantially more money in it as a
5 result of the investment in this MSMB that it had before you
6 invested; correct?

7 A Yes.

8 Q Now, it says here that you're seeking long-term
9 investment; correct?

10 A Yes.

11 Q Now, that's the objective of a retirement account as a
12 practical matter because you want to have money when you get
13 old and retired and no longer have income; correct?

14 A Yes, and I hoped that this investment would be that.
15 Would fit that bill.

16 Q Okay. And to some degree it did.

17 You should have held on to your Retrophin stock,
18 it's at \$20?

19 A You don't say.

20 MR. SRINIVASAN: Objection.

21 THE COURT: Sustained.

22 MR. BRAFMAN: I withdraw that.

23 THE COURT: The jury is to disregard those comments.

24 Q The last part of the paragraph reads, "The partnership is
25 intended for investment solely by sophisticated investors who

MARSHALL - CROSS - BRAFMAN

1 are accustomed to and fully understands the risk of such
2 investments."

3 And you fit that bill; correct?

4 A Well, I thought I did, yes.

5 Q Okay.

6 Now, I think on direct examination you were asked
7 whether Mr. Shkreli ever told you about an investment fund or
8 a hedge fund that he had run named Elea.

9 Do you recall that?

10 A I recall being asked that, yes.

11 Q You told us that he never told you about Elea; correct?

12 A I don't believe he did.

13 Q I would like to you turn to Page 22.

14 A I have it.

15 Q All right.

16 If you look -- I don't know what I did to turn off
17 this light off.

18 A Well, regardless, I see it.

19 Q I want the jury to see it. I have it here, but I don't
20 have it on the screen.

21 MR. BRAFMAN: Do the jurors have it?

22 THE JURY: (Collectively) Now it is.

23 Q Okay. Under "Portfolio Manager," you see that heading?

24 A Yes, I do.

25 Q "The following is a summary the business and educational

MARSHALL - CROSS - BRAFMAN

1 background of the portfolio manager who will be responsible
2 for all investment decisions of the partnership.

3 Martin Shkreli. In addition to performing operating
4 MSMB, Mr. Shkreli is the founder and portfolio manager of
5 Elea Capital Management."

6 Do you see that there?

7 A Yes, I do see that.

8 Q Did you read this before you invested?

9 A I think it's a 40-something-page document and the answer
10 is yes.

11 Q I'm not being critical, I'm just saying can you see Elea
12 Capital as a prior fund that Mr. Shkreli was involved with in
13 this offering prospectus before you invested?

14 A I believe I read this document.

15 Q Okay.

16 Do you remember whether you asked Mr. Shkreli about
17 Elea Capital good or bad or anything about it?

18 A I don't believe I did.

19 Q "Now, prior to forming MSMB, Mr. Shkreli was a healthcare
20 and technology analyst with Intrepid Capital Management.
21 Prior to that, Mr. Shkreli was employed by Cramer Berkowitz
22 and Company?

23 Do you know who Cramer is in the Cramer Berkowitz
24 and Company?

25 A No.

MARSHALL - CROSS - BRAFMAN

1 Q Do you know Jim Cramer, the guy who is on CNBC and has
2 that crazy investment show?

3 A Yes.

4 Q Did you ask Mr. Shkreli about his experience working with
5 Jim Cramer?

6 A No.

7 Q Did you know prior to investing that he started that
8 there when he was 17?

9 A I did not.

10 Q Okay.

11 So would it be fair to say that you really didn't
12 ask Mr. Shkreli any questions about his background before you
13 invested, you were investing Mr. Shkreli that you met in the
14 office and that you rant and raved about?

15 MR. SRINIVASAN: Objection.

16 THE COURT: Sustained.

17 Q Now, when I say to you the words, "securities with a
18 limited market," what do you understand that to mean?

19 A I would understand that it would be securities that there
20 are not enough securities out for there to be a big volume on
21 a daily basis. So that if you invest in a company that
22 doesn't have big volume, you might have difficulty selling the
23 shares or a big enough volume.

24 Q You would say that might also be thinly traded
25 securities; correct?

MARSHALL - CROSS - BRAFMAN

1 A Yes.

2 Q A security is no good if you can't sell it, or if there
3 is no volume if somebody wants to buy it; correct?

4 A I wouldn't say it's no good.

5 Q It's not as valuable as Google or Amazon, or one of those
6 stocks?

7 A Well, if it's hard to sell it -- that decreases its
8 value.

9 Q All right.

10 And one of the things you wanted in this investment
11 was to have an investment in, you said, I think, on direct,
12 "freely tradeable securities"?

13 A Yes.

14 Q All right.

15 Now, look at what the memorandum provides under
16 Paragraph C on Page 29.

17 You have that, sir?

18 A Yes.

19 Q I'm going to read it, and then I'm going to ask you a
20 couple of questions and I will stop every once in a while.

21 "Securities with a limited market. Securities or
22 other investments, without an active trading market as
23 hereafter defined, shall be assigned clear value by the
24 general partner based upon, One, recent sale price."

25 Let me stop there.

MARSHALL - CROSS - BRAFMAN

1 If I wanted to evaluate a company that was freely
2 tradeable, do you understand what the words, "Last sale mean"?

3 A Yes.

4 Q So you look to see what the stock got on the last sale,
5 and if it got \$20 a share, the stock will be worth \$20 a share
6 in your mind; correct?

7 It's not a trick question. I just want to -- last
8 sale is easy because you just look at what the stock sold for.
9 If you want to value that stock per share, you have a board
10 that tells you it's selling at \$20 a share; correct?

11 A Well, the reason I hesitate is that's one factor. And
12 that's probably the key factor, but you might also see that
13 the bid/ask spread is now 18 to 18 and a half, and in that
14 case you think it's worth less than the last trade.

15 Q But it gives you have a ballpark value?

16 A Yes, correct.

17 Q Now, if you go to the second way to value it. "Opinions
18 of brokers trade actively in the security."

19 If you see a security that's actively traded, you
20 could check with some of the expert money managers and get
21 their opinion as to how much that security is worth; correct?

22 A I assume that's what that language means.

23 Q But they do that all the time. Don't they say, Target
24 price is X and it can affect the way the market reacts.

25 Jim Cramer does it every day. He says this company

MARSHALL - CROSS - BRAFMAN

1 is undervalued --

2 MR. SRINIVASAN: Objection, Judge.

3 Q -- target price of 20 and if it's time--

4 MR. SRINIVASAN: Objection.

5 Q -- it can impact on the market; correct?

6 THE COURT: Sustained.

7 Q But do you understand -- let me move on to the next
8 question.

9 You can also look at other companies, or other
10 markets for similar companies; correct?

11 A It says, "Comparison with market values for similar
12 companies."

13 Q And four, "The investment risk and/or potential."

14 That's always a factor; right?

15 A Yes.

16 Q All right.

17 And marketability, if any, and/or such other factors
18 as the general partner in its sole discretion deems
19 appropriate. What this tells you is that Martin Shkreli, in a
20 company like MSMB, that has no share value and no track
21 history is going to be the person who is going to make the
22 evaluation?

23 MR. SRINIVASAN: Objection, your Honor.

24 THE COURT: Sustained.

25 Q What do you understand that to mean?

MARSHALL - CROSS - BRAFMAN

1 A This was somewhat boilerplate that told you if a security
2 is difficult to determine the value, then these were the
3 factors that would be taken into account.

4 As I said there were parameters, for example, the
5 agreement also says that they would never invest in more than
6 ten percent of the fund in securities that did not have --
7 that were not marketable.

8 Q Is that what it says, ten percent?

9 A I believe it does.

10 Q Do you see what else it says after the ten percent. Let
11 me find it for you.

12 A I think it's on Page 8 at the top.

13 Q And what it's says is "The partnership overall investment
14 in restricted securities will be limited, however, to a
15 maximum of ten percent in terms of their costs at time of
16 purchase of current market value of partnership assets."

17 Correct?

18 A Right.

19 Q So it's ten percent at cost; right?

20 A That's what it says, yes.

21 Q And the shares that you got before you were able to sell
22 them for a lot of money has a value of 000.1 percent, isn't
23 that correct?

24 MR. SRINIVASAN: Objection, your Honor.

25 THE COURT: Overruled.

MARSHALL - CROSS - BRAFMAN

1 Q Isn't that correct, sir?

2 A Well, I think the stated value -- that didn't mean it's
3 the market value, but it was .0001.

4 Q And ten percent of .0001 is what? Nothing?

5 A That's par value.

6 MR. SRINIVASAN: Objection.

7 THE COURT: Sustained.

8 A A lot of stocks state a par value of --

9 THE COURT: Excuse me. I'm going to overrule the
10 objection.

11 You can answer.

12 A A lot of stocks state a par value which is different from
13 its market value.

14 Q But the -- let's move on.

15 Now, you had to fill out a subscription agreement;
16 is that correct?

17 A It is, yes.

18 Q And I think that was one the exhibits, and it's
19 Government Exhibit 25 in evidence. It was introduced on your
20 direct examination.

21 You have it, sir?

22 A What tab?

23 MR. SRINIVASAN: Tab 16.

24 MR. BRAFMAN: Thank you.

25 THE WITNESS: Yes, I have it.

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1 Q All right.

2 Now, this basically tells you to tell the company a
3 little bit about yourself; is that correct?

4 A It does, yes.

5 Q Because you have to meet certain criteria to be
6 considered a person who can invest in this; correct?

7 A Yes.

8 Q Now, if you look at Page 3 of the subscription agreement
9 under number 3.1, you list yourself as president and CEO of
10 The Rosewood Corporation?

11 A Yes.

12 Q It says 3.2, "Please summarize briefly your business and
13 financial background." And you say you practiced law for 25
14 plus years, have been in business for 15 years, 12 as
15 president of Rosewood; is that correct?

16 A That's right.

17 Q And that's all accurate, sir?

18 A Yes.

19 Q Now, if you look at 3.3, do you have sufficient knowledge
20 and experience in financial and business matters so that you
21 are capable of evaluating the merits and risks of investing in
22 restricted securities of a private enterprise as the
23 partnership. Answer: Yes.

24 A It says, "Such as the partnership."

25 Q Yes. And you check yes?

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1 A I did, yes.

2 Q Okay.

3 And you knew when you were investing based on this
4 question that you were investing in restricted securities of a
5 private enterprise such as the partnership; correct?

6 MR. SRINIVASAN: Objection.

7 THE COURT: Sustained.

8 Q Isn't it what it says?

9 MR. SRINIVASAN: Objection, your Honor.

10 THE COURT: Sustained.

11 Q Did you then write in connection with 3.4, "Please be
12 supply brief information as to any prior investments you have
13 made during the past five years similar to the partnership
14 such as funds of funds, hedge funds, or other private
15 investment partnerships."

16 And you list, and I'm going to try to read it
17 correctly, you invest with Blackrock.

18 What is Blackrock?

19 A That's a New York based fund of funds.

20 Q I understand. It's like a big hedge fund?

21 A Yes, it is.

22 Q And Blackstone. That's a big hedge fund?

23 A Yes. Portfolio Advisors.

24 Q And Portfolio Advisors Fund of Funds, is that another
25 hedge fund?

MARSHALL - CROSS - BRAFMAN

1 A No, that one is not a hedge fund.

2 Q Okay.

3 Then you say, "Also, my IRA investor it invests with
4 Southwest Partners Hedge Fund." Correct?

5 A Southwell Partners Hedge Fund.

6 Q So you have a significant degree of experience in
7 partnerships similar to the partnership, MSMB; correct?

8 MR. SRINIVASAN: Objection, your Honor.

9 THE COURT: Sustained.

10 Q Does the question ask you, "Please supply brief
11 information as to any prior investments you have made during
12 the past five years similar to the partnership such as funds
13 of funds, hedge funds, or other private investment
14 partnerships.

15 Did I read that correctly, sir?

16 A That's the question, yes.

17 Q Okay. That's the question.

18 Investing in the past five years similar to the
19 partnership; correct?

20 A That's the question.

21 Q And the partnership being MSMB; is that correct?

22 A Yes.

23 THE COURT: Mr. Brafman, is now a good point to give
24 the jury a break?

25 MR. BRAFMAN: Thank you, Judge.

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1 THE COURT: Please put your notebooks on your chairs
2 and don't discuss the case during the break.

3 Thank you.

4 (Jury exits courtroom at 3: 53 p.m.)

5 (Witness leaves the witness stand.)

6 THE COURT: All right. Let's take a few minutes.

7 The witness would like to know if it's possible that
8 he'll finish today?

9 MR. BRAFMAN: I'm sorry, your Honor.

10 THE COURT: The witness would like to know if it is
11 possible that he can be -- his testimony can be concluded
12 today.

13 MR. BRAFMAN: I will be finished with cross today.
14 I think it's maybe another 40 minutes at most.

15 THE COURT: All right. Well, let's hope for the
16 best.

17 MR. BRAFMAN: I will do my best. What time is your
18 flight?

19 THE WITNESS: I'm flying out tomorrow.

20 MR. BRAFMAN: I will try and get done today.

21 THE WITNESS: Tomorrow morning, yeah.

22 THE COURT: Let's take some time.

23 (Recess taken.)

24 THE COURT: Can you check to see if the jury is
25 back?

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1 Thank you.

2 COURTROOM DEPUTY: Jury entering.

3 (Jury enters courtroom at 4: 11 p.m.)

4 THE COURT: All the jurors are present. Please have
5 a seat.

6 You may resume, Mr. Brafman.

7 MR. BRAFMAN: Yes, your Honor, thank you.

8 EXAMINATION BY
9 MR. BRAFMAN:
(Continuing.)

10 Q Mr. Schuyler, I'm going to ask you to look at Page 4 of
11 the subscription agreement which is on the screen.

12 Do you have it, sir?

13 A Yes.

14 Q And question 3.5 asks, "Please provide in the space below
15 any additional information which would indicate that you have
16 sufficient knowledge and experience in financial and business
17 matters so that you're capable of evaluating the merits and
18 risks of investing in restricted securities of a private
19 enterprise such as the partnership."

20 And what you write there, correct me if I'm wrong,
21 "I evaluate investments for Rosewood," correct?

22 A Such investments for Rosewood.

23 Q And that's true; correct?

24 A Yes, it is.

25 Q And now 3.6, "Do you have adequate means of providing for

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1 your current needs and personal contingencies and have no need
2 for liquidity in this investment." And you checked the box
3 marked, yes?

4 A That's right.

5 Q Now, 3.7, are you aware that the proposed offering of
6 perfect interests will involve nonmarketable nontransferable
7 securities requiring your capital investment to maintain for
8 an indefinite period of time and you checked yes; correct?

9 A I did, yes.

10 Q And it says, 3.8, "In evaluating the merits and risks of
11 this investment, do you intend to rely on the advice of any
12 other persons who will be acting as your purchaser or
13 representative."

14 And you said no; correct?

15 A That's right.

16 Q Can I just have a minute, your Honor.

17 Now, I think we've established, sir, that this
18 investment was on your behalf, but it was for money that it
19 was in an IRA; correct?

20 A Yes.

21 Q And your IRA is administered by a custodian; is that
22 correct?

23 A The assets are held by. A portion of the assets were
24 held by the custodian IRA Plus Southwest.

25 Q And do you have to give them notice when you ask for an

MARSHALL - CROSS - BRAFMAN

1 investment out of your IRA and tell them what it is that
2 you're going to be investing in?

3 A You asked several questions.

4 Q Let me just break it down?

5 A What I did was I told them that I was going to invest in
6 MSMB And to wire the funds in accordance with the wiring
7 instructions.

8 Q And if you look at the, SM, Schuyler Marshall, 0000081
9 it's in back of the materials you're looking at.

10 Do you see that?

11 A I do.

12 Q That's the investment authorization form that you filled
13 out for IRA, The IRA Experts; correct?

14 A They're not experts, they just are custodians.

15 Q But what they call themselves is IRA experts; correct?
16 It's up there where my finger is?

17 MR. SRINIVASAN: Your Honor, I think the jury can't
18 see it.

19 MR. BRAFMAN: I'm sorry.

20 Q Do you see it? The IRA Experts?

21 A That's in their logo, yes.

22 Q They're the ones who administer part of your IRA;
23 correct?

24 A Well, administer is not the correct term.

25 Q They hold it?

MARSHALL - CROSS - BRAFMAN

1 A Yes.

2 Q Okay. And you trust them in holding it?

3 A Yes.

4 Q And when you want to invest in something, you're supposed
5 to give them notice as to what you're investing in so they can
6 take the money out of the IRA and send it to the investment
7 vehicle, fair?

8 A That's right.

9 Q All right.

10 Now, you have to give them certain assurances, do
11 you not?

12 A I think I signed a form that had various, sort of, outs
13 for them on the second page.

14 Q Outs for them, meaning, in case this goes bad, they're
15 not responsible?

16 A Yes.

17 Q Now, let's look at one of the outs you gave them which is
18 D.

19 Do you have that, sir?

20 A I do.

21 Q And it's SM00082 in evidence. And under D, it says as
22 follows: I agree and represent that I have performed or will
23 perform the necessary and required due diligence of a prudent
24 investor with regards to the investment and investment sponsor
25 including, but not limited to, obtaining and reading any

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1 applicable prospectus, Private Placement Memorandum, offering
2 circular, or similar document prior to authorizing IRA Plus
3 Southwest LLC and/or custodian to make the investment on
4 behalf of my IRA.

5 Did I read that correctly?

6 A You did.

7 Q So you're representing to them before they send this
8 money, Relax guys, I've done my own due diligence; is that
9 correct?

10 A That's correct, yes.

11 Q So if the investment goes bad, you can't go to them and
12 say, hey, why did you invest in this enterprise?

13 A Correct.

14 Q Now, Government Exhibit 104-3 that the Government put
15 into evidence on your direct examination is a series of
16 e-mails and a press release and this is 104-3.

17 And I think you testified to receiving this on or
18 about December 18th and 19th; correct?

19 You see the document? You can look on the screen,
20 sir, it's easier.

21 A Okay.

22 Q You see it? There's an e-mail from Martin Shkreli to
23 you?

24 A Yes.

25 Q An e-mail from Martin Shkreli addressed to friends?

MARSHALL - CROSS - BRAFMAN

1 A The answer is yes.

2 Q Okay.

3 And it says, "Please see the attached press release.
4 As many of you know, I have started a biotechnology company,
5 Retrophin, RTRX. This is my primary focus going forward and I
6 hope you will support me in this new role as I will use my
7 12 years of professional investing in healthcare stocks to
8 guide Retrophin to create shareholder value."

9 And you got that e-mail on or about December 18th?

10 A Yes.

11 Q I have took things, Judge, and it's not working?

12 THE COURT: What would you like to do?

13 MR. BRAFMAN: I would like to have somebody help me.
14 My VCR is still flashing midnight, Judge.

15 Q All right.

16 So this is your response when you get this press
17 release for Retrophin on December 19th, you don't say, What
18 the hell is Retrophin?" You say, "Congratulations." Correct?

19 A Yes.

20 Q Did you know that Martin was investing MSMB Money in
21 Retrophin?

22 A I did not.

23 Q Did you know that Martin was starting Retrophin?

24 A Yes, I had heard, and it seems like a year before they
25 mentioned that they were trying to start Retrophin. I think I

MARSHALL - CROSS - BRAFMAN

1 referred to that as they were trying to get a license from the
2 University of Minnesota or Michigan, one of those.

3 Q So you were aware of name, you just didn't know that
4 Martin had put MSMB Money into it?

5 A That's right.

6 Q Now, you say, "Congratulations, Martin. Sounds
7 promising. Does Retrophin have enough cash to get through
8 phase two and/or start phase three. If not, what are the
9 plans to secure the needed funds? Approximately what
10 percentage of the fund value is represented by Retrophin, and
11 when do you plan to close it down and distribute, and am I
12 correct in assuming that distribution will consist of cash and
13 Retrophin shares."

14 You signed is it Schuyler; correct?

15 A That's right.

16 Q Now, even though you assume that part of what you would
17 get back would be money and Retrophin shares; correct?

18 A There was an earlier thing that he sent out which said
19 that they were going to redeem the investors out for cash, or
20 the investors would have the option to take cash and Retrophin
21 shares.

22 Q And while it took a long time and involved a lot of back
23 and forth between you and Martin, and you and Mr. Greebel and
24 Martin, ultimately, you got back cash and Retrophin shares;
25 correct?

MARSHALL - CROSS - BRAFMAN

1 A Yes.

2 Q All right.

3 Now, do you know what MSMB Paid for the Retrophin
4 shares it got to give you back?

5 MR. SRINIVASAN: Objection, your Honor.

6 THE COURT: Sustained.

7 Q Do you know if there was any cost to MSMB For Retrophin
8 shares it used to pay you back?

9 MR. SRINIVASAN: Objection, your Honor.

10 THE COURT: Overruled.

11 A I don't know.

12 Q Okay. And when you got the Retrophin shares, there was
13 no cost basis to you; right?

14 Do you know what I mean by cost basis?

15 A I know what you mean, but I don't really know whether
16 there was or there wasn't.

17 Q When you got the stock, you just got it. You didn't pay
18 for it; right?

19 A That's right.

20 Q When I say, "Cost basis," if you buy a stock for \$10, you
21 sell it for 20, your cost basis is ten; correct?

22 A That's right.

23 Q You didn't pay out of pocket for Retrophin shares?

24 A That's correct.

25 Q So anything you made when you sold them, whether it was

MARSHALL - CROSS - BRAFMAN

1 40,000 or 600,000, that was profit. Pure profit; correct?

2 A Yes.

3 Q Now, in your experience with hedge funds, if a hedge fund
4 general partner makes a bad trade and it loses money, in your
5 experience is the general partner liable to reimburse the
6 investors out of his own pocket?

7 MR. SRINIVASAN: Objection, your Honor.

8 THE COURT: Overruled.

9 A Absent fraud or gross negligence, I would say not.

10 Q Because what you're doing in the hedge fund is you are
11 relying on the general partner; correct?

12 A Yes.

13 Q And most of the hedge fund prospectuses including this
14 one has a paragraph which basically says, Absent fraud or
15 gross negligence, he's not responsible if he makes a bad
16 trade; correct, sir?

17 A Yes.

18 Q Now, did you pay Martin Shkreli or MSMB Or Retrophin any
19 fees for the shares that you got?

20 A You mean the MSMB Shares or Retrophin shares.

21 Q Either one.

22 A MSMB, as I recall, had a one percent management fee and
23 then a 20 percent what's called a back end or a fee or profit
24 sharing that would be 20 percent any gains that the
25 partnership made.

MARSHALL - CROSS - BRAFMAN

1 Q And did you ever see any fees being paid to Mr. Shkreli
2 on behalf of your involvement with MSMB?

3 A I never got an audit, so I never -- some of the monthly
4 statements said this is your account value net of fees. And
5 some said, gross of fees which meant before fees were taken
6 out.

7 Q Now, the Government showed you a series of forms you
8 received from Mr. Shkreli in the course of your history with
9 MSMB Starting with 81-1.

10 Do you see that document it's on the screen now?

11 A Yes, I have to.

12 Q And you got that on or about March 2, 2011?

13 A I'm assuming that that I got all of these on the dates
14 that are shown on the documents.

15 Q And do you know what, if anything, on this document is
16 inaccurate or false?

17 A I do not.

18 Q Okay. Now, go to 81-2.

19 Do you see that document, sir?

20 A Yes.

21 Q That's another valuation from Martin Shkreli performance
22 statement Sunday, April 10, 2011?

23 A Yes.

24 Q And is it fair to say that you got that on or about that
25 date?

MARSHALL - CROSS - BRAFMAN

1 A Yes.

2 Q Do you know what, if anything, on that document is false
3 or inaccurate?

4 A I assume every one of these documents was accurate.

5 Q And as you sit here today, do you have any evidence to
6 the contrary?

7 A I do not.

8 Q Okay. Now, 81-3 in evidence is dated Sunday May 8, 2011.
9 Correct, sir?

10 A Yes.

11 Q And to save some time, we'll go through the same
12 questions.

13 Do you have any idea whether anything on this
14 document is false?

15 A Do not.

16 Q And 81-4 in evidence is dated May 8, 2011.

17 Once again, you have no idea whether anything on
18 this document is false or inaccurate?

19 A I hope it's all true.

20 Q Okay. 81-5?

21 A Same answer.

22 Q Same answer. And 81-6? Same answer?

23 A Yes, uh-huh.

24 Q And 81-7?

25 A Same.

MARSHALL - CROSS - BRAFMAN

1 Q And the last one is 81-8. And I think you testified on
2 direct examination that this was the last performance
3 evaluation you received from Mr. Shkreli, and it comes in on
4 September of 2012; correct?

5 A I testified that was the last written one I got. He
6 subsequently gave me a verbal one.

7 Q But the last written one?

8 A Yes.

9 Q And the last written one says that the value of your
10 investment is now, approximately \$282,237 net of fees?

11 A That's right.

12 Q You got \$300,000 in cash which is a little bit more than
13 what's stated here; correct?

14 A That's right.

15 Q Now, during the calendar year 2010, I'm sorry, 2012, did
16 you continue to have e-mail correspondence with Mr. Shkreli
17 about other companies that he was recommending to you, if you
18 recall?

19 A I don't recall right now.

20 Q I'm going to put this up just for the witness and the
21 Government if I can and ask it's designated as Defendant's
22 Exhibit 4459.

23 Does the witness see it?

24 THE COURT: You need to move.

25 Q Do you see it?

MARSHALL - CROSS - BRAFMAN

1 A Yes, I see it.

2 Q I asked you whether or not you recognize this as an
3 e-mail from you from Mr. Shkreli to you, and from you to
4 Mr. Shkreli in June of 2012?

5 A I think so, yes.

6 MR. BRAFMAN: I offer it into evidence as
7 Defendant's Exhibit 4459.

8 MR. SRINIVASAN: Objection, your Honor.

9 THE COURT: I understand the basis for the
10 objection. Do you want to give me the basis for your proffer,
11 sir?

12 MR. BRAFMAN: I'm sorry.

13 THE COURT: The basis for your proffer?

14 MR. BRAFMAN: Do you want me to do it here or there?

15 THE COURT: If you can do it in one word, but if not
16 we'll go to sidebar.

17 MR. BRAFMAN: Goes to the continuing relationship
18 between the defendant and this witness during the period in
19 question.

20 MR. SRINIVASAN: Not on basis.

21 THE COURT: I will see you at sidebar.

22 MR. BRAFMAN: I'm sorry.

23 THE COURT: I'll see you at sidebar.

24 MR. BRAFMAN: Yes, Judge.

25 (Continued on the next page.)

SIDEBAR CONFERENCE

Sidebar

1 (Sidebar conference held on the record in the
2 presence of the Court and counsel, out of the hearing of the
3 jury.)

4 MR. BRAFMAN: Your Honor, there is no hard cut that
5 stops the relationship between Mr. Shkreli and this investor
6 because it goes on for years. And during the period in
7 question, the relationship have part Mr. Shkreli in good faith
8 trying to help this guy and he has testified to other tips he
9 got.

10 This is not one that he has testified too, but I
11 think it's probative of Mr. Shkreli's state of mind believing
12 he's dealing with someone who is a sophisticated investor, and
13 also his state of mind in why he continues to deal with
14 Mr. Shkreli, why he doesn't go to the SEC, why he signs the
15 settlement agreement because he's dealing with someone who
16 keeps helping him. I don't understand the basis of the
17 objection.

18 MR. SRINIVASAN: Your Honor, the basis is hearsay.

19 MR. BRAFMAN: It's not hearsay between two of them.

20 MR. SRINIVASAN: That's defendant's statements.

21 MR. BRAFMAN: It's not being offered for the truth
22 of it. It's being offered for the effect it has on him.

23 I'm not going to ask whether he bought this company
24 or sold this company or made money on it.

25 MR. SRINIVASAN: One we did.

SIDEBAR CONFERENCE

Sidebar

1 THE COURT: Okay. If you're not going to ask him
2 about the effect that it had on him i.e., did you use this
3 information to buy shares why are you offering it.

4 MR. BRAFMAN: Because it shows the continuing
5 ongoing nature of the relationship.

6 THE COURT: He testified that he and Mr. Shkreli
7 continued to communicate about stocks that he recommended
8 through, I think, you said June 18th.

9 MR. BRAFMAN: That's why there's no prejudice to the
10 Government because it's more of the same.

11 MR. SRINIVASAN: It's not prejudice, your Honor.
12 Prejudice is an element of the hearsay, your Honor.

13 MR. BRAFMAN: It's not being offered for the truth
14 of it. It's being offered for the relationship and for the
15 impact it has on him as trusting Martin Shkreli.

16 MR. SRINIVASAN: You can ask him if the -- we've
17 done this repeatedly refreshing his recollection. Did Martin
18 Shkreli offer stock tips, did he offer you stock tips, does
19 this refresh your recollection.

20 THE COURT: First of all, this witness didn't say he
21 can't recall. He admitted that for June of 2012 he continued
22 to exchange e-mails with Mr. Shkreli about different stock
23 tips. So.

24 MR. BRAFMAN: Then we could have been finished with
25 this long ago. I don't understand the prejudice to the

SIDEBAR CONFERENCE
Sidebar

1 Government.

2 MR. SRINIVASAN: Yes, your Honor to before the wind
3 down period not being.

4 MR. BRAFMAN: I'm going to withdraw the offer and I
5 will ask him about it, okay.

6 (End of sidebar conference.)

7 (Continued on the next page.)
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CROSS - SCHUYLER - BRAFMAN

1 (In open court.)

2 MR. BRAFMAN: May I proceed, your Honor?

3 THE COURT: Yes.

4 EXAMINATION BY

5 MR. BRAFMAN:

6 (Continuing.)

7 Q In June of 2012, did you continue to have exchange of
8 information between you and Mr. Shkreli?

9 A Yes.

10 Q And from time to time, he would send you some idea about
11 a particular stock and you would converse with him about it?

12 A Yes.

13 Q Do you recall whether or not he gave you some information
14 concerning a particular drug dealing with Alzheimer's Disease?

15 A I recall asking if he had a judgment about the company
16 that had such a drug, yes.

17 Q And in June 18th of 2012, did Martin report to you that
18 the Retrophin was going incredibly well?

19 MR. SRINIVASAN: Objection, your Honor.

20 THE COURT: Overruled.

21 Q In June of 2012, did Mr. Shkreli inform you that
22 Retrophin was going incredibly well?

23 A I don't have an independent memory of that.

24 Q Let me ask you to look at 4559 for identification only.

25 Can you see it, sir?

CROSS - SCHUYLER - BRAFMAN

1 A Yes. Yes, I do.

2 Q June 18, 2012. Does it refresh your recollection?

3 A Yes, it does.

4 Q That with respect to Retrophin he was telling you it was
5 going incredibly well?

6 A Yes.

7 Q And that is several months before the wind down letter;
8 correct?

9 A Yes.

10 (Continued on the next page.)

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CROSS - SCHUYLER - BRAFMAN

1 Q Thank you, sir. And would it be a fair statement that
2 once you came to an agreement in principal that you were going
3 to get cash and stock, that then took a period much longer
4 that you would have liked for it to be resolved?

5 A Yes.

6 Q That's some of the back and forth that you and Martin,
7 and then you and Greebel, correct?

8 A Yes.

9 Q During this period of time were you keeping tabs on
10 Retrophin independently?

11 MR. SRINIVASAN: Can I get a time frame, your Honor?

12 THE COURT: Can you specify a time frame, Sir.

13 BY MR. BRAFMAN:

14 Q In December 2012, during that time period, after the wind
15 down letter, were you keeping up with developments on
16 Retrophin or Mr. Shkreli?

17 A I don't believe so.

18 Q When you got a subpoena from the Government to turnover
19 your documents, do you remember all of the documents you
20 turned over?

21 A I do not remember.

22 Q Do you remember turning over an article about Mr. Shkreli
23 that appeared in Forbes?

24 A I don't remember doing that; but I don't deny that I did
25 if I had it.

CROSS - SCHUYLER - BRAFMAN

1 Q I'd like you to look at what I've marked for
2 identification as 4454 and ask you if you could look at this
3 and tell me, sir, whether it refreshes your recollection that
4 you were independently trying to keep track of Mr. Shkreli and
5 Retrophin?

6 MR. SRINIVASAN: Objection, your Honor.

7 THE COURT: Sustained. Refrain the question, sir.

8 BY MR. BRAFMAN:

9 Q Does it refresh your recollection that among the
10 documents you gave the Government when they subpoenaed your
11 records, was an article that referenced Martin Shkreli and
12 Retrophin?

13 A The direct answer is it doesn't refresh my recollection.
14 But if you tell me this was a document that I turned over to
15 the Government, then I certainly don't deny it. I may have
16 had it.

17 Q Look at Bates stamp numbers -- SM is Schuyler Marshall,
18 do you see that?

19 MR. SRINIVASAN: Objection.

20 THE COURT: Sustained.

21 Q Is 1044 in evidence? It is, thank you.

22 Now, I want to return your attention, sir, to 1044
23 in evidence. I'm putting it on the screen, a series of
24 e-mails between and Mr. Shkreli, it ends April 8. Do you see
25 that, sir?

CROSS - SCHUYLER - BRAFMAN

1 A I do.

2 Q I want to turn to the prior page, SM000055, which has the
3 beginning of this chain. Do you see that, sir?

4 A Yes.

5 Q Let me start on the bottom, "Martin, I received a
6 Retrophin share certificate with the restrictive legend on the
7 back. When does the company plan to register these shares or
8 otherwise make them tradeable? Also, you have indicated that
9 the fund would be liquidating and distributing cash for the
10 remaining balance, when will that occur and what is my
11 approximate remaining balance. Thank you, Schuyler Marshall."
12 Is that an e-mail you sent to Mr. Mr. Shkreli on February 27,
13 2013?

14 A Yes.

15 Q And the response from Mr. Shkreli in March 4 to that
16 e-mail is -- 2013, "Hi, Schuyler. I hope you're well. There
17 is no specific registration plan other than we intend to
18 register the shares as soon as possible. You may be familiar
19 with Rule 144, which allows for the sale of any unregistered
20 security if held for over a year. I hope we can get them
21 registered a lot sooner than that, but hopefully that gives
22 some error bounds." I'm going to stop there.

23 That is March 4, 2013, Mr. Shkreli indicates that
24 Rule 144 requires them to be held over one year, a year later
25 you were selling these shares; is that correct?

CROSS - SCHUYLER - BRAFMAN

1 A It was a little after a year later.

2 Q Okay, but you were able to sell the shares, correct?

3 A Yes.

4 Q Now, the balance of his comments to you is, "The fund
5 focused primary on growing Retrophin and as such this is the
6 only remaining asset." The let me stop.

7 The fund, you understood that to be MSMB, correct?

8 MR. SRINIVASAN: Objection, your Honor.

9 BY MR. BRAFMAN:

10 Q MSMB Capital, is that what you understand that to be, you
11 said the fund?

12 A I understood that that's what he was referring to in this
13 sentence when he said fund, yes.

14 Q Now, "The fund focused primarily on growing Retrophin,
15 and as such this is the only remaining asset. I would be
16 willing to buy back your shares for the most recent quoted
17 value of your fund, if that is of use to you, or give you more
18 shares from my personal shares to "true up" -- in quotation --
19 "your account value." Let me stop.

20 What do you understand the term "true up," to mean
21 to you?

22 A I assume that what he was referring is the last value
23 that he had quoted to me, which was over 300,000, and if these
24 shares were not, didn't match up to that value he'd give me
25 more shares to --

CROSS - SCHUYLER - BRAFMAN

1 Q True up?

2 A -- to make it equal to that value.

3 Q To get you whole, correct?

4 A Yes.

5 Q Then he continues. "It is unfortunate the stock market

6 doesn't like Retrophin as much as I do. However, over time

7 I'm confident the shares will be worth a ton. I wouldn't be

8 quick to sell them if I were you. I'm happy to come to Dallas

9 and give you an update on what I'm doing." You see that?

10 A Yes, I do.

11 Q Did you meet him in Dallas?

12 A No.

13 Q And did you go to New York to meet him?

14 A No.

15 Q His predictions about the shares being worth a ton turned

16 out to be accurate, correct?

17 MR. SRINIVASAN: Objection.

18 THE COURT: Sustained.

19 A Well, in response you say, "Martin, thanks for

20 responding. What was my most recent quoted account value? I

21 believe the last I saw in early fall was about 265K. I do

22 need to consider the option as these are IRA funds, as you

23 know, and thus were intended for conservative investments. If

24 I do take this option I may buy some RTRX in smaller quantity

25 and in an account that could hold a speculative investment in

CROSS - SCHUYLER - BRAFMAN

1 the future, and look forward to following it closely.

2 Regards, Schuyler."

3 So during this period even though you were asking
4 for your money back, you were still on reasonably pleasant
5 terms with Mr. Shkreli, correct?

6 A I would say this, that I was really shocked when I found
7 out that the only asset the fund held was Retrophin.

8 Q I understand.

9 A But I was trying to remain cordial. I thought that was
10 the best way to get cash back and into my IRA. Also, what I
11 was telling him, and it was true, that I would follow
12 Retrophin and consider a small investment, not in my IRA,
13 possibly in the future.

14 Q Okay. Now, you then begin to receiving certain
15 correspondence at some point from Mr. Greebel; is that
16 correct?

17 A Yes.

18 Q You received correspondence from Mr. Greebel after a
19 period of time when the negotiations are continuing, it's no
20 longer you dealing directly with Mr. Shkreli, you're now
21 dealing at times with Mr. Greebel, correct, sir?

22 A Let me just say, I believe I started having
23 correspondence with Mr. Greebel in June of 2012 -- 2013,
24 sorry.

25 Q Now, in June of 2012 is when you started dealing with

CROSS - SCHUYLER - BRAFMAN

1 Mr. Greebel, correct?

2 MR. SRINIVASAN: Objection, your Honor.

3 Q Is that what you said?

4 A I think I meant '13.

5 Q I'm sorry, June of 2013, I stand corrected.

6 In June 2013 do you know what a litigation hold
7 letter is?

8 A No.

9 Q You don't?

10 A No.

11 Q You're contemplating litigation, you want the other party
12 to keep documents, not destroy them. Have you ever sent them
13 a letter or e-mail saying, please hold the documents because
14 they may be needed?

15 A Yes.

16 Q All right. So in the East we refer to that as a
17 litigation hold letter.

18 You sent an e-mail which would be classified as a
19 litigation hold e-mail; isn't that correct?

20 MR. SRINIVASAN: Objection, your Honor.

21 THE COURT: Sustained. You can rephrase it.

22 Q I'll just show it to him and ask him what he meant.

23 A I know what you're talking about; yes, I did send that
24 letter, tried to refer to that this morning, to try to ratchet
25 up the pressure that I would be prepared to go to litigation

CROSS - SCHUYLER - BRAFMAN

1 if they didn't carry through with the agreement.

2 Q I'm going to show you what is in evidence as 104-7. You
3 read that on your direct examination. Do you see that, sir,
4 it's on the screen?

5 A That's it, yes.

6 Q This is your letter now to Evan Greebel -- your e-mail,
7 sorry -- on June 24, 2013, correct.

8 A Yes.

9 Q This is your method of, as you say ratcheting up the
10 pressure, correct?

11 A Yes.

12 Q And letting them know that you were serious about
13 starting litigation if this couldn't be resolved, correct,
14 sir?

15 A That's a characterization, but in general I was trying to
16 let them know that stalling around had gone on too long. I
17 wanted them to put an ethical obligation on him to retain all
18 these documents, which I thought would make him nervous to
19 focus on this and finish the agreement.

20 Q Okay. And what you say to Mr. Greebel, who was a partner
21 at Capuchin, "Evan, I'm disappointed. No one is responding to
22 calls or e-mails concerning getting the release executed and
23 our agreement performed. I am still waiting to proceed" --

24 A "Willing."

25 Q "Willing to proceed as we agreed." Let me stop there.

CROSS - SCHUYLER - BRAFMAN

1 Did you have a verbal understanding with Mr. Greebel
2 as to how this would be resolved or was it with Mr. Shkreli?

3 A Mr. Shkreli.

4 Q And you're assuming that Mr. Shkreli had told
5 Mr. Greebel, correct?

6 MR. SRINIVASAN: Objection, your Honor.

7 THE COURT: Overruled.

8 A The way it happened was that Mr. Shkreli sent me an
9 e-mail, it's in evidence, saying -- actually, he sent it to
10 Evan Greebel saying what the deal, was copying me.

11 Q Right?

12 A It was \$300,000 and the shares of Retrophin and I think
13 6300 more shares.

14 Q And this is your response now, writing to Mr. Greebel, to
15 your knowledge is this the first time you're writing directly
16 to Mr. Greebel?

17 A I can't say one way or another.

18 Q All right. You say that you are still willing to proceed
19 as we agreed. Did Mr. Greebel agree with you or was it
20 Shkreli, I want to straighten that out?

21 A I was referring to Shkreli.

22 Q "And however, in order to ensure preservation of
23 documents in case they are needed, this confirms my request to
24 be provided the following documents concerning the relating to
25 my account value at the time all times all documents

CROSS - SCHUYLER - BRAFMAN

1 concerning or relating to the funds and Martin's investment in
2 Desert Gateway, Retrophin, all documents concerning relating
3 to Martin's acquisition of his shares in Retrophin, including
4 the consideration for such shares, and relation or referring
5 to those shares issued to other fund shareholders, all
6 documents relating to Martin's decision to convert a long
7 short fund into a single investment in one company, including
8 efforts, if any, to obtain approval for such conversion from
9 any limited partner in the fund, all documents relating to or
10 concerning the disposition of any fund investment. Evan, my
11 position that no privilege would apply to communications with
12 the attorneys, representing MSMB and Retrophin as those
13 attorneys owe a duty to the entities and their owners
14 including limited partners and minority shareholders. This is
15 not a complete request and hopefully it becomes moot, through
16 performance of the agreement outlined in the release. Regard,
17 Schuyler Marshall."

18 Did I read that correctly?

19 A There were a couple of glitches, but the substance was.

20 Q You got them -- this letter goes to Evan Greebel, and
21 when you say "hope it becomes moot," you are suggesting you
22 hope litigation becomes moot, that's what you're implying?

23 A Yes.

24 Q If you come to a settlement, it will not have to proceed
25 to litigation.

CROSS - SCHUYLER - BRAFMAN

1 A We had already come to a settlement.

2 Q You just want to finish it?

3 A Yes.

4 Q Then later in the summer -- withdrawn.

5 In that earlier one with Mr. Greebel, he writes
6 back, "Schuyler, I've been out of country and just returned.
7 We will revert regarding our conversation from last week."

8 You say, "I will be out of country starting tomorrow
9 for about ten days. If you wish to, I could sign the release
10 and deliver it to a trusted party, such as Darren Blanton or a
11 local attorney to release to you upon payment of the
12 consideration."

13 Given this is during the summer, both you and
14 Mr. Greebel essentially are informing of your travel or
15 vacation plans?

16 A Yes.

17 Q That had something to do with the delay, because they
18 didn't entrust it to Darren Blanton or a third-party, you and
19 Shkreli correct -- you and Greebel?

20 A That's correct.

21 Q Now, there was also communication that Mr. Shkreli was
22 copied on by Greebel and you were copied on by Shkreli. An
23 example of that is 104-12 in evidence, which was gone over on
24 direct examination. This is the beginning on the bottom where
25 it's Martin Shkreli to you, and then Evan Greebel is copied.

CROSS - SCHUYLER - BRAFMAN

1 And Martin tells you, "After exhaustive talks with
2 our attorneys there will be a revision to the agreement. You
3 will get this at or about 7:00 p.m. Eastern Standard Time, the
4 revision simple. It merely removes MSMB as an obligor and
5 references Retrophin alone. This is crucial for a number of
6 reasons that are beyond my ability to explain. Evan is
7 copied. If you have any questions we are sending the wire as
8 we speak. The money should hit tomorrow morning. I'm glad to
9 get this behind us."

10 And the money did come the next day, didn't it?

11 A I think so, I didn't verify that, but it came in a day or
12 two, yes.

13 Q What Mr. Greebel says is, "I apologize for the delay. I
14 had some corrective issues." Do you know what that means?

15 A I'm not sure what that meant.

16 Q "As discussed, attached are two settlement release
17 agreements, one between and Retrophin contemplating the
18 payment of the money and second between you and Martin and
19 MSMB relating to the delivery the shares. In the interest of
20 time I'm simultaneously sending to Martin. The difference
21 between these two agreements and prior version is that we
22 divided the prior version into separate focus payment
23 obligation, and release of delivery obligation in regards
24 Martin and MSMB, otherwise the agreements are the same.
25 Please be advised if you have any questions, alternatively if

CROSS - SCHUYLER - BRAFMAN

1 it acceptable, please fax me or PDF one to me." Do you see
2 that?

3 A I do.

4 Q Did you call Mr. Greebel and try to get a further
5 explanation?

6 A I don't recall doing so.

7 Q You have practiced law responsibility for 35, 40 years?

8 MR. SRINIVASAN: Objection.

9 THE COURT: Sustained.

10 Q You've been a lawyer for quite sometime by that time?

11 A Yes.

12 Q You're not shy about asking questions if you wanted to
13 ask them?

14 MR. SRINIVASAN: Objection.

15 THE COURT: You can answer, sir.

16 A I think if I need to know something I'm certainly willing
17 to ask. But I don't recall that I asked for clarification of
18 this.

19 Q You're dealing with, on the other hand a lawyer from a
20 firm that you recognize as a prominent firm, that's part of
21 equation, correct?

22 A Yes.

23 Q And at the end of the day you get your release
24 ultimately; is that correct?

25 A Well, I got documents that I signed.

CROSS - SCHUYLER - BRAFMAN

1 Q Okay. Did you read them before you signed them?

2 A I did, yes.

3 Q And if you read them before you signed them, you would
4 understand that they refer to Retrophin as a company as part
5 of the entities being released, correct?

6 A Yes.

7 Q And you knew by then that Retrophin was a public company?

8 A Yes, I believe so.

9 Q You're Chairman of a Board of a public company or a
10 private company?

11 A Private.

12 Q And do you know as you sign -- would you have signed the
13 document if you believed you were involved in anything that
14 was fraudulent?

15 MR. SRINIVASAN: Objection, your Honor.

16 THE COURT: Sustained.

17 Q Did you know whether or not Retrophin had approved the
18 document before you signed it?

19 A I assume they did.

20 Q But you didn't make inquiry?

21 A Well, it's a major New York law firm representing the
22 company. They are the lawyers, not me. And I was, I just
23 assumed that they had authority to do what they agreed to do.

24 Q You were getting the money, sir, correct?

25 A Yes.

CROSS - SCHUYLER - BRAFMAN

1 Q All right. Now I think we have verified that on
2 August 29 a wire for \$300,000 was actually sent and went to
3 FDO Morgan Stanley Smith Barney for credit to your account?

4 A That's where it went. I'm not certain of the date, but
5 it was close to that date.

6 MR. BRAFMAN: Let me have a minute, your Honor.

7 Q Did there come a time when you were contacted by the SEC?

8 A Yes.

9 Q What happened was you received a letter from Eric Schmidt
10 of the SEC asking you to come for a voluntary interview; is
11 that correct?

12 A Yes.

13 Q And you then contacted Martin Shkreli?

14 A I did.

15 Q I'm going to show you a copy of Exhibit 4460 for
16 identification.

17 MR. SRINIVASAN: There is no question pending.

18 Q Do you remember what you said to Mr. Shkreli? Do you
19 remember what he said to you after you were contacted by the
20 SEC?

21 A Yes.

22 Q Maybe we don't need to use this.

23 Do you remember telling Mr. Shkreli in words or
24 substance that you received a letter from Eric Schmidt of the
25 SEC asking you to come in for a voluntary interview?

CROSS - SCHUYLER - BRAFMAN

1 A Yes.

2 Q In words or substance you told Martin Shkreli that you're
3 not inclined to submit to a voluntary interview?

4 A Yes. I had agreed in a settlement to notify him if
5 anybody contacted me about the settlement.

6 Q This is a confidentiality clause?

7 A Yes.

8 Q You notified Mr. Shkreli about the contact from the SEC
9 and Mr. Shkreli encouraged you to go in there and tell the
10 truth, didn't he?

11 A In substance, yes.

12 Q Well, it's not in substance, it's in detailed words. Do
13 you remember the conversation?

14 A I don't remember the exact words, but the gist of it is
15 as you said, yes.

16 Q That you should go and cooperate of fully with the SEC
17 and provide them any information to resolve the interview?

18 A I believe that's correct.

19 Q And then you asked Martin Shkreli whether or not you
20 should tell them that you should ask whether the SEC
21 understands the, "no harm, no foul" concept?

22 MR. SRINIVASAN: Objection.

23 THE COURT: Overruled.

24 Q Did you say that to Mr. Shkreli?

25 A Yes, I did.

MARSHALL - REDIRECT - MR. SRINIVASAN

1 Q What did you understand the "no foul, no harm" concept to
2 mean?

3 MR. SRINIVASAN: Objection, your Honor.

4 THE COURT: Overruled.

5 A What I meant by that, I was trying to give them some
6 encouragement. At this point I felt that even though it had
7 taken a long time, he had ultimately paid back my investment
8 and then some. I appreciated it. And I had heard that, I
9 think he in fact told me, he was trying to deal similarly with
10 all the other investors. My point here was that I had not
11 been harmed in terms of losing money. In fact, I made money.
12 That's what I meant by no harm, no foul.

13 MR. BRAFMAN: Thank you, sir. Have a pleasant sent
14 trip back.

15 THE COURT: Redirect?

16 MR. SRINIVASAN: One moment, your Honor.

17 REDIRECT EXAMINATION

18 BY MR. SRINIVASAN:

19 Q Mr. Marshall, Mr. Brafman just asked you about some
20 communications you had with the defendant regarding the SEC
21 subpoena you received?

22 A Yes.

23 Q And in the communications that he was, Mr. Brafman, was
24 citing, you also told the defendant that you think the picture
25 is essentially a number of Acting Rule violations, correct?

MARSHALL - REDIRECT - MR. SRINIVASAN

1 MR. BRAFMAN: Objection, your Honor.

2 THE COURT: I'm sorry, I didn't hear the question.
3 Would you repeat it?

4 Q In the communications that you had with Mr. Shkreli, you
5 also said that you think the picture is essentially a number
6 of Acting Rule violations?

7 MR. BRAFMAN: Objection, your Honor.

8 THE COURT: Overruled.

9 A Yes.

10 Q What did you mean by that?

11 A In effect what I was saying, is that the no harm, no foul
12 applied to me and I assumed other investors who had been paid
13 back. And that that's one issue.

14 A separate issue is whether or not they had
15 adequately had complied with Securities Act and Securities
16 Rules in the handling of this, in particular converting a
17 hedge fund investment into a single investment in a non-traded
18 company. That was what as I was referring to.

19 Q Mr. Marshall, Mr. Brafman went through a series of the
20 performance reports that you received?

21 A Yes.

22 Q And he asked you for each of those whether you thought
23 anything on those performance reports were false, do you
24 recall that?

25 A Yes.

PROCEEDINGS

1 Q Have you ever seen bank records for MSMB Capital?

2 A No.

3 Q Have you ever seen brokerage records for MSMB Capital?

4 A No.

5 MR. SRINIVASAN: No further questions. Thank you.

6 MR. BRAFMAN: Nothing, your Honor.

7 THE COURT: All right, sir. Have a pleasant trip
8 back to Texas.

9 THE WITNESS: Thank you.

10 (Whereupon, the witness was excused.)

11 THE COURT: Does the Government have another
12 Government witness they would like to call between now and
13 5:30?

14 MS. SMITH: It's up to the Court to proceed with
15 another witness. Or we have a stipulation for the witness on
16 bank records that I could read now.

17 THE COURT: If the jury would just indulge us a
18 little longer, the Government will read a stipulation, which I
19 explained is an agreement between the parties as to fact.
20 Please listen carefully.

21 MS. SMITH: Your Honor, procedurally if it would
22 help for the jury to see the stipulation as we put it into
23 evidence.

24 THE COURT: On the document camera or the laptop?

25 MS. SMITH: Laptop. Stipulation 801. It reads, "It

PROCEEDINGS

1 is hereby of stipulated and agreed by between the undersigned
2 parties that, one, Government Exhibit 501 consists of true and
3 accurate copies of JP Chase records for MSMB Capital
4 Management LP, account number ending 9453, and is admissible
5 in evidence at trial.

6 "Two, Government's Exhibit 502, 502-1, and 502-2
7 consists of true and accurate copies of interactive brokerage
8 records for MSMB Capital Management LP account number ending
9 1231, and are admissible in evidence at trial.

10 "Three, Government's Exhibit 503 consists of true
11 and accurate copies of JP Morgan Chase records for MSMB
12 Healthcare Management LLC for account number ending 1768, and
13 is admissible in evidence at trial.

14 "Four, Government's Exhibit 504 consists of true and
15 accurate copies of JP Morgan Chase records for MSMB Healthcare
16 Investors LLC, account number ending 3319, and is admissible
17 in evidence at trial.

18 "Five, Government's Exhibit 505 consists of true and
19 accurate copies of JP Morgan Chase records for MSMB Healthcare
20 LP, account number ending 7700, and is admissible in evidence
21 at trial.

22 "Six, Government's Exhibits 506 and 506-1 consists
23 of true and accurate copies of Bank of America records for
24 MSMB Healthcare LP, account number ending 9143, and are
25 admissible in evidence at trial.

PROCEEDINGS

1 "Seven, Government's Exhibit 507 consists of true
2 and accurate copies of Merlin Securities records for MSMB
3 Healthcare LP, account number ending 2983, is admissible in
4 evidence at trial.

5 "Eight, Government's Exhibit 508 consists of true
6 and accurate copies of JP Morgan Chase records for Retrophin
7 LLC, account number ending 2444, and is admissible in evidence
8 at trial.

9 "Nine, Government's Exhibit 509 consists of true and
10 accurate copies of JP Morgan Chase records for Retrophin
11 Incorporated, account number ending 2527, and is admissible in
12 evidence at trial.

13 "Ten, Government's Exhibit 510, consists of true and
14 accurate copies of JP Morgan Chase records for Retrophin
15 Incorporated, account number ending 3600, and is admissible in
16 evidence at trial.

17 "Eleven, Government's Exhibit 511, consists of true
18 and accurate copies of JP Morgan Chase records for Retrophin
19 Incorporated, account number ending 3830, and is admissible in
20 evidence at trial.

21 "Twelve, Government's Exhibit 5126, consist of true
22 and accurate copies of JP Morgan Chase records for Retrophin
23 LLC, account number ending 8845, and is admissible in evidence
24 at trial.

25 "Thirteen, Government's Exhibit 513 consists of true

PROCEEDINGS

1 and accurate copies of JP Morgan Chase records for Retrophin
2 Incorporated, account number ending 9678, and is admissible in
3 evidence at trial.

4 "Fourteen, Government's Exhibit 514, consists of
5 true and accurate copies of JP Morgan Chase records for the
6 defendant Martin Shkreli, account number ending 6097, and is
7 admissible in evidence at trial.

8 "Fifteen, Government's Exhibit 515, consists of true
9 and accurate copies of JP Morgan Chase records for Desert
10 Gateway, account number ending 8730, and is admissible in
11 evidence at trial.

12 "Sixteen, this stipulation marked Government's
13 Exhibit 801 is admissible in evidence at trial."

14 It's dated June 28, 2017, signed by the parties.

15 THE COURT: All right, thank you.

16 How are the jurors feeling? Would you like be
17 excused for the evening and come back at 9:00 o'clock? Yes,
18 why don't we do that.

19 Ladies and gentlemen, please leave your notebooks on
20 your chairs, conscious of any exposure about this case or
21 Mr. Shkreli. And please don't talk about this case.

22 I'll see you tomorrow, and we hope to put you in
23 this the jury box by nine. Thank you.

24 (Jury exits the courtroom.)

25 THE COURT: Thank you. Is there anything I need to

PROCEEDINGS

1 address at this time before we adjourn?

2 MS. KASULIS: No, your Honor.

3 MR. BRAFMAN: No, your Honor.

4 THE COURT: Thank you.

5
6 (Whereupon, the matter was adjourned July 11, 2017
7 at 9:00 a.m..)

8
9 * * * * *

10
11 I certify that the foregoing is a correct transcript from the
12 record of proceedings in the above-entitled matter.

13 Rivka Teich, CSR RPR RMR
14 Official Court Reporter
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Rivka Teich CSR, RPR, RMR
Official Court Reporter

1 I N D E X

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5 SCHUYLER MARSHALL
 6 DIRECT EXAMINATION BY MR. SRINIVASAN 2423
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8 * * * *

9 I N D E X

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